110-364

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 224.

THE COUNTY OF HOWARD, Plaintiff in Error,

vs.

GAIUS PADDOCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED FEBRUARY 16, 1881.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judge of the circuit court of the United States for the eastern division of the western district of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuirt court, before you, at the April term, 1880, thereof, between Gaius Paddock, plaintiff, and Howard county, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said county of Howard, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this nineteenth day of November, in the year of our Lord one thousand eight hundred and eighty.

Issued at office in the city of Jefferson with the seal of the circuit court of the United States, for the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States,
Western District of Missouri.

Allowed by—
A. KREKEL, *Judge.*

2 *Return to Writ.*

UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this ninth day of February, A. D. 1881.

[SEAL.] H. C. GEISBERG, *Clerk.*

Endorsed: No. 1312. United States circuit court, western district of Missouri, eastern division. Gaius Paddock *vs.* Howard County.

Writ of error to the circuit court of the United States for the western district of Missouri, eastern division.

3 The United States of America to Gaius Paddock, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Missouri, eastern division, wherein Howard county is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Arnold Krekel, judge of the circuit court of the United States for the eastern division of the western district of Missouri, this nineteenth day of November, in the year of our Lord one thousand eight hundred and eighty.

A. KREKEL, *Judge.*

4 UNITED STATES OF AMERICA,
Western District of Missouri, } *ss:*

We hereby acknowledge due service of the within citation, this 19th day of November, A. D. 1880.

OVERALL & JUDSON,
Attorneys for Defendant in Error.

Endorsed: 1312. United States circuit court, western district of Missouri, eastern division. Gaius Paddock *vs.* Howard County. Citation.

5 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri. } *sct.:*

Pleas before the honorable circuit court of the United States in and for the eastern division of the western district of Missouri, at the April term, 1880, in the case of—

GAIUS PADDOCK, Plaintiff,
vs. } No. 1312.
HOWARD COUNTY, IN THE STATE OF MISSOURI, Defendant.

Be it remembered that heretofore, to wit, on the 2d day of April, A. D. 1879, there was filed in the clerk's office of the circuit court of the United States for the eastern division of the western district of Missouri a petition in the words and figures following, to wit:

Petition.

In the Circuit Court of the United States for the Western District of Missouri, in the Eastern Division thereof.

GAIUS PADDOCK, Plaintiff,
vs. } April Term, 1879.
HOWARD COUNTY, Defendant.

Plaintiff states that he is a citizen and resident of the State of Illinois, and that the defendant is a municipal corporation, duly organized under the laws of the State of Missouri, being one of the counties of the State of Missouri, and composed of citizens of the State of Missouri, and within the western district of Missouri in the eastern division thereof.

Plaintiff further states, that on the 1st day of September, A. D. 1870, Howard county, the defendant herein, by each of its certain writings obligatory, called bonds, numbered 43, 51, and 55, and on the 1st day of March, A. D. 1871, the defendant, by each of its certain writings obligatory, called bonds, numbered 74, 76, 93, 95, 96, 100, 101, 102, 103, 129, 137, and on the 1st day of June, 1871, by each of its certain writings obligatory, called bonds, and
numbered 144, 146, 147, 150, 171, 174, 175, 195, 196, 204,
6 205, 223, 224, 230, 247, 249, and on the 1st day of September,
1871, by each of its certain writings obligatory, called bonds, numbered 326, 327, all signed by Wm. R. Heath, the then presiding justice of the county court of Howard county, and attested by A. J. Herndon, the then clerk of said county court, and sealed with the seal of said court, promised to pay ten years after date of said bonds to the Louisiana and Missouri River Railroad Company, or bearer, at the National Bank of Commerce, in New York, the sum of one thousand dollars, with interest at the rate of eight per cent. per annum, payable semi-annually, in installments of forty dollars each, on the 1st days of March, 1st June, and September of each year, on presentation and surrender of the proper annexed interest coupon.

Plaintiff further states, that said bonds were issued by said county under the authority of an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10th, 1859, and in pursuance of the orders of the county court of Howard county, made respectively on the 23d day of December, 1869, and 15th day of July, 1870, in payment of a subscription made by said county court to the capital stock of said Louisiana and Missouri River Railroad Company, a corporation created by the act aforesaid of the General Assembly of the State of Missouri, and a part of the route of which said railroad lay through said county, to aid in the completion of said company's railroad through said county.

Plaintiff further states, that said bonds are in the following words, figures, marks, and impressions, due allowance being made for the dates thereof, and for their respective numbers, to wit:

"United States of America. No. —. Ten years. $1,000. Howard county bond. Interest eight per cent. per annum, payable on the first days of March and September.

Know all men by these presents, that the county of Howard, in the State of Missouri, acknowledges itself indebted and firmly bound to the Louisiana and Missouri River Railroad Company 7 in the sum of one thousand dollars, (in current funds,) which sum the said county hereby promises to pay to the Louisiana and Missouri River Railroad Company, or bearer, at the National Bank of Commerce, in New York, ten years after the date of this bond, together with interest thereon from date, at the rate of eight per cent. per annum, which interest shall be payable semi-annually, in current funds, on the presentation and surrender at said bank of the annexed coupons as they severally become due and payable. This bond is issued in pursuance of the orders of the county court of Howard county, made respectively on the 23d day of December, 1869, and 15th day of July, 1870, which orders were made in accordance with an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10, 1859.

In testimony whereof the said county of Howard has executed this bond by the presiding justice of the county court of Howard county, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same, and affixing thereto the seal of said court.

Done at the city of Fayette, county of Howard aforesaid, this first day of September, 1870.

[SEAL.] WM. R. HEATH,
Presiding Justice of the County Court of Howard County, State of Missouri.

Attest:
A. J. HERNDON,
Clerk of the County Court of Howard County, Missouri.

Plaintiff further states that said county received the stock of said railroad company in an amount equal to the bonds issued by it, and paid the interest of all of said bonds as the installments thereof fell due, until the maturity of the coupons hereinafter described.

Plaintiff further states that the coupons hereinafter named were atttached to and made a part of the bonds above enumerated, and are for installments of interest due plaintiff on said bonds from which they were severally detached. And plaintiff states that he is the owner, holder, and bearer for value of interest coupons 8 No. 14, severally detached from said bonds numbered 144, 146, 147, 150, 171, 174, 175, 195, 196, 204, 205, 223, 224, 230, 247, 249, 326, 327, and of interest coupons No. 15, severally detached from said bonds numbered 74, 76, 93, 95, 96, 100, 101, 102, 103, 129, 137, and of interest coupons No. 16, severally detached from said bonds numbered 43, 51, 55, by the terms of which said Howard county promised to pay the bearer of each of said coupons, being thirty-two in number, the sum of forty dollars at said bank, those numbered 14 on the 1st day of June, A. D. 1878, except from bonds Nos. 326 and 327, and they on March 1, 1878, and those numbered 15 on the 1st day of December, A. D. 1878, and those numbered 16 on *on* Sept. 1st, 1878; that on the days and year last aforesaid said plaintiff presented said coupons at the said bank for payment, and payment thereof was refused, and that the same remain unpaid. Wherefore plaintiff asks judgment for the amount of said thirty-two coupons in the sum of twelve hundred and eighty dollars, and interest thereon from the date of the maturity thereof, and herewith files said coupons as part of this petition.

And plaintiff further states that he is the owner, holder, and bearer for value of interest coupons No. 15, severally detached from said bonds numbered respectively 144, 146, 147, 150, 171, 174, 175, 195, 196, 204, 205, 223, 224, 230, 247, 249, 326, 327, and interest coupons No. 16, severally detached from said bonds numbered respectively 74, 76, 93, 95, 96, 100, 101, 102, 103, 129, 137, and interest coupons No. 17, severally detached from said bonds numbered respectively 43, 51, 55, by the terms of which said Howard county promised to pay to the bearer of each of said coupons, being thirty-two in number, the sum of forty dollars at said bank on the first day of March, A. D. 1879; that on the day and year last aforesaid, plaintiff presented said coupons at said bank for payment, and payment thereof was refused, and that the same remain unpaid. Wherefore plaintiff asks judgment for the amount of said thirty-
two coupons in the sum of twelve hundred and eighty dollars,
9 and interest thereon from the 1st day of March, A. D. 1879,
and herewith files said coupons as part of this petition.

OVERALL & JUDSON,
Atty's for Pl'ff.

Thereupon there was issued out of said clerk's office, on said day, a summons in words and figures as follows, to wit:

Summons.

EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct.:*

The President of the United States of America to the marshal of the United States for the western district of Missouri, Greeting:

You are hereby commanded to summon Howard county, in the State of Missouri, and the western district thereof, to be and appear before the honorable circuit court of the United States, in and for the eastern division of the western district of Missouri, on the first day of the next term thereof, to be begun and holden at the city of Jefferson, in said district, on the third Monday, the 21st day of

Defendant denies that said instruments, purporting to be bonds or writings obligatory, were issued under the act of the General Assembly of the State of the Missouri, entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10, 1859, and denies that under said act Howard county was authorized to create or make or execute the said several obligations or instruments set out in plaintiff's petition.

12 Defendant denies there was any authority of law in the county court of Howard county to make the orders referred to in said petition of dates respectively 23d day of December, 1868, and 15th day of July, 1870.

Defendant denies that said bonds were issued in payment of a subscription made by the county court of Howard county court to the capital stock of the Louisiana and Missouri River Railroad Company, under and by authority of the act of March 10th, 1859; and defendant denies that any part of the route of the road authorized to be built or constructed and actually constructed under said act is in the county of Howard.

Defendant denies the copy of the instrument sued on, as set out in plaintiff's petition, is a true copy of the pretended bond.

Defendant denies that the county of Howard ever subscribed to the capital stock of the railroad company authorized by the act of March 10th, 1859, or ever received any amount of stock in said company on account of any subscription authorized to be made by the existent law of the State of Missouri at the time of said alleged acts.

Defendant denies that Howard county is in law bound to pay any of the coupons set out in plaintiff's petition, and denies that the same are the obligations of the defendant.

Defendant for further answer to plaintiff's petition says, that the General Assembly of the State of Missouri, by an act entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10th, 1859, authorized the Louisiana and Missouri River R. R. Co., a corporation created by said act "to mark out, locate, and construct a railroad from the city of Louisiana, in the county of Pike, by the way of Bowling Green, in said county, to some suitable point on the North Missouri railroad, intersecting said road between the southern limits of the town of Wellsburg, in Montgomery county, and the northern limits of the town of Mexico, in Audrain county, thence to the
13 Missouri river, at the most eligible point, on a line the most suitable and advantageous as regards distance, grade, cost of road, and permanent value," and, by the 29th section of said above recited act, it was made "lawful for the county court of any county in which any part of the route of said railroad may be to subscribe to the stock of said company." Defendant says that said act authorized the construction of a single line of railroad, and that under the provisions of said act above recited th said Louisiana and Missouri River Railroad Company duly organized

and constructed a railroad commencing at the city of Louisiana, in Pike county, thence by Bowling Green to the North Missouri railroad, at the town of Mexico, in Audrain county, thence by the town of Fulton, in Callaway county, to the mouth of Cedar creek, in Callaway county, on the north bank of the Missouri river; that said railroad was the only railroad marked out, located, and constructed under said act of March 10th, 1859; that the said road at no point touched or passed through the county of Howard; that on the 10th day of January, 1868, the county of Callaway, to secure the location and construction of said road on the route above described, did subscribe the sum of $500,000 to the capital stock of said railroad company, and the said company did receive said subscription and did locate said road, as a condition in said subscription, and did construct said railroad as above set forth.

And further answering defendant says that, after the location of said railroad, as above set forth, under said act of March 10th, 1859, the General Asembly of the State of Missouri did, by an act approved March 24th, 1868, and after the adoption of the constitution of 1865, amend said act of March 10th, 1859; that said act of March 10th, 1859, as amended by sec. 20, 21, and 22, wholly changed and altered the franchises as the same were granted in the act of 1859, authorizing the construction of a wholly different road and upon a
14 different route, and declared the road authorized to be constructed under the act of 1859 to be a branch railroad of the road authorized to be built by the amended act; that said amended was accepted as required by same by said Louisiana and Missouri River Railroad Company.

Defendant says that on the 23d day of December, 1868, and after the passage of said amendatory act of March 24th, 1868, and after the acceptance of said amendatory act of 1868 by the said railroad company, duly filed in the office of the Secretary of State, on the 27th day of May, 1868, as required by said act, "the county court of Howard county, without authority of law, by order appointed one Andrew J. Herndon, as commissioner of the county of Howard, to subscribe four hundred thousand dollars to the capital stock of the Louisiana and Missouri River Railroad Company, upon conditions therein expressed; that said subscription was to the Louisiana and Missouri River Railroad Company, under the charter of said Louisiana and Missouri river railroad, as it then stood affected by the amendatory act of 1868, which said act is entitled "An act to amend an act entitled an act to incorporate the Louisiana and Missouri River Railroad Company by increasing the amount of the capital stock of said company, defining more explicitly the power of the board of directors to fix the western terminus of said road, authorizing the location and construction of a branch road, and conferring upon said board the necessary powers to carry into effect the several objects contemplated by this charter, and also by striking out sections eleven, eighteen, twenty-seven, thirty, and thirty-one of said act," approved March 24, 1868, and by the constitution of 1865,

it then being authorized to construct a wholly different and
other railroad than that authorized to be marked out, located,
and constructed by the act of 1859, to wit, a railroad from
the "city of Louisiana, in Pike county, by way of or near
15 Bowling Green in said county, and thence to such point on
either the north or south bank of the Missouri river, as may
be selected by the board of directors." The defendant says this
pretended and unlawful subscription was the only subscription that
was ever attempted to be made by the county court of Howard
county to the Louisiana and Missouri River Railroad Company.

Defendant, further answering, says that afterwards the county court of Howard county, without any lawful authority therefor, did cause the several pretended bonds of Howard county, set out and described in plaintiff's petition, and the pretended interest coupons thereto attached, to be issued and delivered to the said Louisiana and Missouri River Railroad Company, all of which acts and doings of the said county court of Howard county were wholly unauthorized and prohibited by the constitution and laws of the State of Missouri, and were utterly null and void.

Defendant says the plaintiff had full notice of each and every defense herein set forth, and had special notice that the act of 1859, as amended by the act of 1868, was the only existent law authorizing the Louisiana and Missouri River Railroad Company to build a railroad, and that the unauthorized and pretended subscription of Howard county to said railroad company was not made under or authorized by the act of 1859, and was not pretended to be made for the construction of the road authorized to be built by said act of 1859; but, on the contrary, that said act of 1859, as amended by the act of March 24, 1868, was at that time the only law giving to said railroad company corporate powers.

Defendant, further answering, says that on the 23d day of Dec.,
1868, the constitution of the State of Missouri prohibited any sub-
scription to be made by any county to the capital stock of a railroad
company without the assent of a majority of two-thirds of
16 the qualified voters, obtained at gen'l and sp'l election. De-
fendant says that said provision of the constitution was ap-
plicable to the legislation of 1868.

Defendant says said pretended subscription was never sanctioned or assented to by a vote of the qualified voters of Howard county as required by the constitution of the State. And the pl'ff had full notice thereof.

Def't says all of the acts and doings of the county court of Howard county in and about the pretended obligations or bonds of Howard county, as the same are set forth in plaintiff's petition, were in violation of the constitution of the State of Missouri and wholly without authority of law, and were utterly null and void.

And, having fully answered the petition of plaintiff, defendant prays to be discharged with proper costs.

JOHN D. STEVENSON,
J. H. ROBERTSON, *Atty's for Def't.*

And afterwards, at said last mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had in said case on the 26th day of April, A. D. 1879, to wit:

GAIUS PADDOCK
vs. } 1312.
HOWARD COUNTY.

This day comes the plaintiff, by J. H. Overall, Esq., his attorney, and files a reply to the answer herein, and also a stipulation signed by counsel waiving a jury herein. And said reply so filed as aforesaid, is in the words and figures following, to wit:

Reply.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

GAIUS PADDOCK, Plaintiff,
vs. } April Term, A. D. 1879. No. 1312.
HOWARD COUNTY, Defendant.

Now, at this day, comes the plaintiff, and for replication to defendant's answer says he denies each and every allegation in said answer contained.

OVERALL & JUDSON,
Atty's for Pl'ff.

17 And said stipulation waiving a jury, so filed as aforesaid, is in the words and figures following, to wit:

Jury Waiver.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri.

GAIUS PADDOCK, Pl'ff,
vs. } April Term, 1879.
HOWARD COUNTY, Def't.

Now, at this day, come the plaintiff and defendant, by their attorneys, and waiving a jury, herein consent that this cause may be submitted to the court, and by it tried.

OVERALL & JUDSON,
Att'ys for Pl'ff.
STEVENSON & ROBERTSON,
Att'ys for Def't.

And afterwards, at an adjourned day of said last mentioned regular stated term of said court, the following further proceedings were had in said case on the 1st day of July, 1879, to wit:

Hearing and Submission.

GAIUS PADDOCK
vs. } 1312.
HOWARD COUNTY.

This day come the parties by their attorneys, the plaintiff by John H. Overall, Esq., and the defendant by Messrs. Stevenson & Robertson, and this case being regularly called for trial, a stipulation waiving a jury having been heretofore filed, the same is tried by the court sitting as a jury. Whereupon evidence is heard, cause argued by counsel and submitted to the court upon the pleadings and proofs, and taken under advisement.

And afterwards, at a regular stated term of said circuit court, begun and held on the third Monday of November, 1879, at Jefferson City, in said district, the following further proceedings were had in said case on the 18th day of November, 1879, to wit:

Submission Set Aside. Amended Petition Filed.

GAIUS PADDOCK
vs. } 1312.
HOWARD COUNTY

18 This day come the parties by their attorneys, the plaintiff by John H. Overall, Esq., and the defendant by John D. Stevenson. Thereupon a stipulation is filed setting aside the submission herein, which is ordered accordingly; thereupon comes the plaintiff, and by leave of court and in accordance with said stipulation, files an amended petition; defendant refiles its answer to said amended petition.

Answer and Reply Refiled and Cause again Submitted.

Plaintiff refiles his reply to said answer; and thereupon said cause is again submitted to the Court upon the pleadings and proofs, and by the Court taken under advisement.

And said stipulation so filed as aforesaid is in the words and figures following, to wit:

Stipulation.

In the United States Circuit Court for the Eastern Division of the Western District of Missouri. November Term, 1879.

GAIUS PADDOCK, Plaintiff,
vs.
HOWARD COUNTY, Defendant.

It is stipulated and agreed by and between plaintiff and defendant, that the submission of this cause may be set aside; that plaintiff shall amend his petition by adding other causes of action, so that the amount claimed shall exceed five thousand dollars; that defendant's answer heretofore filed shall be refiled as his answer to the amended petition, and plaintiff's replication be refiled as replication to answer refiled; that this cause shall thereupon be immediately submitted to the court upon the testimony heretofore adduced before the court, upon which the court shall make findings of fact and enter judgment.

OVERALL & JUDSON,
Att'ys for Pl'ff.
STEVENSON & ROBERTSON,
Att'y for Def't.

And said amended petition, so filed aforesaid, is in the words and figures following, to wit:

Amended Petition.

In the Circuit Court of the United States for the Western District of Missouri, in the Eastern Division thereof. November Term, 1879.

GAIUS PADDOCK, Plaintiff,
vs.
HOWARD COUNTY, Defendant.

19 Plaintiff, for his amended petition, states that he is a citizen and resident of the State of Illinois, and that the defendant is a municipal corporation duly organized under the laws of the State of Missouri, being one of the counties of the State of Missouri, and composed of citizens of the State of Missouri, and within the western district of Missouri, in the eastern division thereof. Plaintiff further states that on the 1st day of September, A. D. 1870, Howard county, the defendant herein, by each of its certain writings obligatory, called bonds, numbered 6, 7, 43, 51 and 55, and on the first day of March, A. D. 1871, the defendant, by each of its certain writings obligatory, called bonds, numbered 74, 76, 93, 95, 96, 100, 101, 102, 103, 129, 137, and on the first day of June, 1871, by each of its certain writings obligatory, called bonds, and numbered 144, 146, 147, 150, 151, 152, 155, 171, 174, 175, 195, 196, 204, 205, 206, 207, 208, 209, 223, 224, 230, 247, 249, and on the 1st day of September, 1871, by each of its certain writings obligatory, called bonds, numbered 326, 327, all signed by Wm. R. Heath, the then presiding justice of the county court of Howard county, and attested by A. J. Herndon, the then clerk of said county court, and sealed with the seal of said court, promises to pay ten years after the date of said bonds to the Louisiana and Missouri River Railroad Company, or bearer, at the National Bank of Commerce, in New York, the sum of one thousand dollars, with interest at the rate of eight per cent. per annum, payable semi-annually, in installments of forty dollars each on presentation and surrender of the proper annexed interest coupons.

Plaintiff further states that said bonds were issued by said county

under the authority of an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10th, 1859, and in pursuance of the orders of the county court of Howard county, made respectively on the 23d day of December, 1869, and 15th day of July, 1870, in payment of a subscription made by said county court to the capital stock of said Louisiana and Missouri River Railroad Company, a corporation created by the act aforesaid of the General Assembly of the State of Missouri, and a part of the
20 route of which said railroad lay through said county, to aid in the completion of said company's railroad through said county.

Plaintiff further states that said bonds are in the following words, figures, marks, and impressions, due allowance being made for the dates thereof, and for their respective numbers, to wit:

"United States of America." No. ——. Ten years. $1,000.
Howard county bond. Interest eight per cent. per annum, payable on the first days of March and September.

Know all men by these *by these* presents, that the county of Howard, in the State of Missouri, acknowledges itself indebted and firmly bound to the Louisiana and Missouri River Railroad Company in the sum of one thousand dollars, (in current funds,) which sum the said county hereby promises to pay to the Louisiana and Missouri River Railroad Company, or bearer, at the National Bank of Commerce, in New York, ten years after the date of this bond, together with interest thereon from date at the rate of eight per cent. per annum, which interest shall be payable semi-annually in current funds, on the presentation and surrender at said bank of the annexed coupons, as they severally become due and payable.

This bond is issued in pursuance of the orders of the county court of Howard county, made respectively on the 23d day of December, 1869, and 15th day of July, 1870, which orders were made in accordance with an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10th, 1859.

In testimony whereof the said county of Howard has executed this bond by the presiding justice of the county court of Howard county under the order of said court signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court.

Done at the city of Fayette, county of Howard aforesaid, this first day of September, 1870.

[SEAL] WM. R. HEATH,
Presiding Justice of the County Court of Howard County, State of Missouri.

21 Attest:
A. J. HERNDON,
Clerk of the County Court of Howard County, Missouri.

Plaintiff further states that said county received the stock of said railroad company in an amount equal to the bonds issued by it, and paid the interest of all of said bonds as the installments thereof fell due until the maturity of the coupons hereinafter described. Plaintiff further states that the coupons hereinafter named were attached to and made a part of the bonds above enumerated, and are for installments of interest due plaintiff on said bonds, from which they were severally detached. Plaintiff further states that he is the owner, holder, and bearer for value of interest coupon No. 16, severally detached from said bonds numbered 6, 7, 43, 51, and 55, and of interest coupon No. 15, severally detached from said bonds numbered 74, 76, 93, 95, 96, 100, 101, 102, 103, 129, and 137, and of interest coupon No. 14, severally detached from said bonds numbered 326 and 327, by the terms of which said Howard county promised to pay to the bearer of each of said coupons, being eighteen in number, the sum of $40 at said bank; that at the maturity thereof said coupons were presented at said bank for payment, and payment thereof refused, and that the same remain unpaid. Wherefore plaintiff asks judgment for the amount of said eighteen coupons in the sum of seven hundred and twenty dollars, and interest thereon from September the first, 1878, and herewith files said coupons as part of this petition.

2d. Plaintiff further states that he is the owner, holder, and bearer for value of interest coupon No. 17, severally detached from said bonds numbered 6, 7, 43, 51, and 55, and of interest coupon No. 16, severally detached from said bonds numbered 74, 76, 93, 95, 96, 100, 101, 102, 103, 129, and 137, and of interest coupons No. 15, severally detached from said bonds numbered 326 and 327, by the terms of which said Howard county promised to pay to the bearer of each of said coupons, being eighteen in number, the sum of $40.00 at said bank on March 1st, 1879; that at the maturity of said coupons they were duly presented at said bank for payment, and payment thereof refused, and that the same remain unpaid. Wherefore
plaintiff asks judgment for the amount of said eighteen cou-
22 pons in the sum of $720.00, and interest thereon from March,
1, 1879, and herewith files said coupons as part of this petition.

3d. Plaintiff further states that he is the owner, holder, and bearer for value of interest coupon No. 18, severally detached from said bonds numbered 6, 7, 43, 51, and 55, and of interest coupon No. 17, severally detached from said bonds numbered 74, 76, 93, 95, 96, 100, 101, 102, 103, 129, and 137, and of interest coupon No. 16, severally detached from said bonds, numbered 326 and 327, by the terms of which said Howard county promised to pay to the bearer of each of said coupons, being eighteen in number, the sum of forty dollars at said bank on the 1st day of September, 1879; that at the maturity of said coupons they were duly presented at said bank for payment, and payment thereof refused, and that the same remain unpaid. Wherefore the plaintiff asks judgment for the amount of said eighteen coupons in the sum of seven hundred and twenty dollars, and interest thereon from Sept. 1st, 1879, and herewith files said coupons as part of this petition.

4th. Plaintiff further states that he is the owner, holder, and bearer for value of interest coupon No. 14, severally detached from said bonds numbered 144, 146, 147, 150, 151, 152, 155, 171, 174, 175, 195, 196, 204, 205, 206, 207, 208, 209, 223, 224, 230, 247, and 249, by the terms of which said Howard county promised to pay to the bearer of each of said coupons, being twenty-three in number, the sum of forty dollars at said bank on June 1st, 1878; that at the maturity thereof said coupons were duly presented at said bank for payment, and payment thereof refused, and that the same remain unpaid. Wherefore plaintiff asks judgment for the amount of said twenty-three coupons in the sum of nine hundred and twenty dollars, and interest thereon from June 1, 1878, and herewith files said coupons as part of this petition.

5th. Plaintiff further states that he is the owner, holder, and
bearer for value of interest coupon No. 15, severally detached from
said bonds numbered 144, 146, 147, 150, 151, 152, 155, 171, 174,
175, 195, 196, 204, 205, 206, 207, 208, 209, 223, 224, 230,
23 247, and 249, by the terms of which said Howard county
promised to pay to the bearer of each of said coupons, being
twenty-three in number, the sum of forty dollars at said bank on
Dec. 1st, 1878; that at the maturity thereof said coupons were duly presented at said bank for payment, and payment thereof refused, and that the same remain unpaid. Wherefore plaintiff asks judgment for the amount of said twenty-three coupons in the sum of nine hundred and twenty dollars, and interest thereon from Dec. 1st, 1879, and herewith files said coupons as part of this petition.

6th. Plaintiff further states that he is the owner, holder and bearer for value of interest coupon No. 16, severally detached from said bonds numbered 144, 146, 147, 150, 151, 152, 155, 171, 174, 175, 195, 196, 204, 205, 206, 207, 208, 209, 223, 224, 230, 247, and 249, by the terms of which said Howard county promised to pay to the bearer of each of said coupons, being twenty-three in number, the sum of forty dollars at said bank on June 1st, 1879; that at the maturity thereof said coupons were duly presented at said bank for payment, and payment thereof refused, and that the same remain unpaid. Wherefore plaintiff asks judgment for the amount of said twenty-three coupons in the sum of nine hundred and twenty dollars, and interest thereon from June 1st, 1879, and herewith files said coupons as part of this petition.

OVERALL & JUDSON,
Att'ys for Pl'ff.

And afterwards, at a regular stated term of said circuit court, begun and holden on the third Monday, the 19th day of April, A. D. 1880, at the place aforesaid, the following further proceedings were had in said case, on said last named day, to wit:

GAIUS PADDOCK
vs. } 1312.
HOWARD COUNTY.

This day there is received and filed herein a stipulation signed by counsel as to the pleadings in this cause, also a supplemental petition filed in pursuance of said stipulation.

And said stipulation, so filed as aforesaid, is in the words and figures following, to wit:

24 *Stipulation as to Pleadings and Submission.*

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri. April Term, 1880.

GAIUS PADDOCK, Plaintiff,
vs.
HOWARD COUNTY, Defendant.

It is stipulated and agreed by and between plaintiff and defendant, as follows: 1st. That plaintiff may file the supplemental petition hereto attached, and that the same may be taken by the court as filed before the submission of this cause. 2d. That a like answer may be taken and considered as filed by the defendant, and a like replication to said answer as are filed in the pleadings, to which this is supplementary. 3d. That the coupons in said supplemental petition described are for installments of the interest on the bonds in plaintiff's former pleadings described and maturing at the times in said supplemental petition set forth.

OVERALL, JUDSON & TUTT,
Att'ys for Pl'ff.
J. D. STEVENSON, *for Def't.*

And said supplemental petition, so filed as aforesaid, is in the words and figures following, to wit:

Supplemental Petition.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri. April Term, 1880.

GAIUS PADDOCK, Plaintiff,
vs.
HOWARD COUNTY, Defendant.

Now, at this day, comes the plaintiff, by his attorneys, and by stipulation hereto attached and made part thereof, files this his supplemental petition.

And plaintiff says that the coupons hereinafter described and set forth are for installments of interest on the bonds in plaintiff's amended petition described, from which they were respectively detached, and that said coupons are by their terms made payable at the National Bank of Commerce, in the city and State of New York, at the several times hereinafter set forth.

Plaintiff further says that he is the holder and bearer of interest coupon No. 17, herewith filed, severally detached from said bonds numbered 326 and 327, described in said amended petition,
25 to which this is supplemental, by the terms of which said county promised to pay to the bearer of each of said coupons, being two in number, the sum of forty dollars at said bank on the first day of March, 1880; that on the day and year last aforesaid, the said coupons were duly presented at said bank for payment, and payment thereof refused, and that the same remain due and unpaid; wherefore plaintiff asks judgment for the amount of said two coupons No. 17, in the sum of eighty dollars, and interest thereon from their maturity.

Plaintiff further says that he is the holder and bearer of interest coupons No. 17, herewith filed, severally detached from said bonds numbered 144, 146, 147, 150, 155, 171, 174, 175, 195, 196, 204, 205, 206, 207, 208, 209, 223, 224, 230, 247, 151, 152, 249, in said petition described, by the terms of which said county promised to pay to the bearer of each of said coupons, being 23 in number, the sum of forty dollars at said bank on the first day of December, 1879; that on the day and year last aforesaid the said coupons were duly presented at said bank for payment, and payment thereof refused, and that the same remain due and unpaid; wherefore plaintiff asks judgment for the amount of said 23 coupons No. 17 in the sum of nine hundred and twenty dollars, and interest thereon from their maturity.

Plaintiff further says that he is the holder and bearer of interest coupons No. 18, herewith filed, severally detached from said bonds numbered 74, 76, 93, 95, 96, 100, 101, 102, 103, 129, 137 in said petition described, by the terms of which said county promised to pay to the bearer of each of said coupons, being eleven in number, the sum of forty dollars at said bank on the first day of March, 1880; that on the day and year last aforesaid, the said coupons were duly presented at said bank for payment, and payment thereof refused, and that the same remain due and unpaid; wherefore plaintiff asks judgment for the amou't of said eleven coupons No. 18 in the sum of four hundred and forty dollars, and interest thereon from their maturity.

26 Plaintiff further says that he is the holder and bearer of interest coupons No. 19, herewith filed, severally detached from said bonds numbered 6, 7, 43, 51, 55, in said petition described, by the terms of which said county promised to pay to the bearer of each of said coupons, being five in number, the sum of forty dollars at said bank on the first day of March, 1880; that on the day and year last aforesaid the said coupons were duly presented at said bank for payment, and payment thereof refused, and that the same remain due and unpaid; wherefore plaintiff asks judgment for the

amount of said five coupons No. 19 in the sum of two hundred dollars, and interest thereon from their maturity.

OVERALL, JUDSON & TUTT,
Att'y's for Pl'ff.

And afterward, at said last mentioned regular stated term of said circuit court, begun and held as aforesaid, the following further proceedings were had on the 22d day of April, A. D. 1880, to wit:

Finding and Judgment.

GAIUS PADDOCK
vs. } 1312.
HOWARD COUNTY.

This day comes the defendant, by John D. Stevenson, Esq., its attorney, and this case having been heretofore submitted to the court upon the pleadings and proofs, and the court being fully advised of and concerning the premises, finds the issues for the plaintiff, and assesses the damages by him sustained by reason of the non-payment of the coupons in the petitions described, at the sum of six thousand, eight hundred and eighty-four dollars and twenty-eight cents ($6,884.28). It is, therefore, considered by the court that the plaintiff, Gaius Paddock, recover against the defendant, the County of Howard, in the State of Missouri, the said sum of six thousand eight hundred and eighty-four dollars and twenty-eight cents ($6,884.28), the amount so found to be due, with interest and costs, and that execution issue therefor.

27 And afterwards, at an adjourned day of said last mentioned regular stated term of said circuit court, the following further proceedings were had on the 4th day of October, 1880, to wit:

GAIUS PADDOCK
vs. } 1312.
HOWARD COUNTY.

This day there is presented to the court a special finding of facts in the above cause, which is signed and ordered to be made part of the record herein. It is further ordered by the court that the amount of the supersedeas bond herein be fixed at the sum of nine thousand dollars.

Said special finding of facts, so filed as aforesaid, is in the words and figures following, to wit:

Special Finding of Facts.

In the Circuit Court of the United States, Western District of Missouri, Eastern Division. April T., 1880.

GAIUS PADDOCK, Pl'ff,
vs. } No. 1312.
HOWARD COUNTY, Def't.

This cause coming on for trial, an agreement of coun*cil* for plaintiff and defendant is filed in open court, whereby a jury is waived and the case submitted to the court, and the court especially finds the facts as follows:

1st. That the Louisiana and Missouri River Company was incorporated by the General Assembly of the State of Missouri by the following act:

An Act to Incorporate the Louisiana and Missouri River Railroad Company.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. A company is hereby incorporated, called "The Louisiana and Missouri River Railroad Company," the capital stock of which shall be three millions of dollars, to be divided into shares of one hundred dollars each, the holders of which, their successors and assigns, shall constitute a body corporate and politic; and by the name aforesaid shall have continued succession, may sue and be sued, plead and be impleaded, defend and be defended against; and make and use a common seal, and change or alter the same;
28 and shall be able, in law and equity, to make contracts; may take hold and possess and enjoy the fee simple or other title in and to any real estate, and may sell, convey, or mortgage the same; and may make by-laws and regulations proper and necessary to carry into effect the provisions of this act not repugnant to the laws or Constitution of the United States, or of this State; and shall have the usual and necessary powers for such purpose.

§ 2. Edwin Draper, John B. Henderson, James O. Broadhead, Josephus Irvine, Aaron McPike, William L. Gatewood, Thomas J. C. Fagg, Simeon P. Robinson, Silas W. Farber, William C. Hardin, Robert Allison, and Hiram Wormack, of Pike county; Mortimer McIlhaney, John P. Clark, Norman Lackland, Preston B. Reed, Robert W. Sinclair, and Armsted Botts, of the county of Audrain; Samuel Crutcher, Josiah Whitesides, Benjamin Sharp, and William R. Harris, of the county of Montgomery, or any nine of them, shall constitute the first board of directors under this act, and shall hold their offices until their successors be qualified; they shall, within ten years after the passage of this act, meet at such time and place as shall be designated by any three of them, and organize as a board of directors; and when organized they shall cause books to be opened for the subscription of the capital stock of said company, at such time and place as they shall designate, under the supervision of such person as they shall appoint; and may continue them open as they may deem proper, and may reopen said books, when necessary, until the whole stock shall be subscribed.

§ 3. So soon as fifteen hundred shares shall be subscribed, the directors shall cause an election to be held for nine directors, at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

§ 4. The stockholders of said company shall meet on the first
Monday in May, in each year, at such place as may be des-
29 ignated by the by-laws of said company, of which at least
twenty days' previous notice shall be given, in two or more
newspapers published in the State, and choose by ballot, by a majority of the votes present, to be given in person or by proxy, thirteen directors, owners of stock in the company; the said directors, and those hereafter to be chosen, in pursuance of the provisions of this act, at their first meeting shall choose by ballot one from their number, as president of said company; and said president and directors shall direct the affairs of said company, and hold their offices for one year, and until others are elected and qualified.

§ 5. At every annual meeting the said stockholders shall have power, by a majority of the votes given, to alter or repeal their by-laws and regulations, and may meet at such other times and places as may be appointed by the president and directors, upon such notice as may be prescribed by the by-laws of said company; and the president, at the request, in writing, of any number of the stockholders representing not less than one-seventh in number and interest, shall cause a special meeting upon giving the like notice of the time, place, and objects of the meeting; and such objects, and none other, shall be acted upon at such meeting, nor shall any business be transacted at such meeting unless a majority of the stockholders be there represented, but the meeting may adjourn, from day to day, until such majority be present.

§ 6. The election for directors shall be conducted in the following manner: The directors, for the time being, shall appoint three stockholders—being neither directors nor candidates—who shall take and subscribe an oath or affirmation before a justice of the peace, well and truly according to law to conduct said election to the best of their knowledge and ability. The judges shall decide upon the qualifications of voters, and when the election is closed, count the votes, and declare who has been elected. In case no
election shall be had at the time specified, the corporations
30 shall not by that reason be dissolved, but it shall be lawful
to hold an election for directors any day thereafter after
giving at least ten days' previous notice of the time and place of holding said election in the newspapers aforesaid. In case of the death, resignation, or removal from this State of a director, or of a failure to elect in case of a tie vote, the vacancy may be filled by the board of directors. At all general meetings or elections by the stockholders, each share of the stock under the number of twenty shall entitle the holder to one vote; and each stockholder holding over the number of twenty shares shall have one vote for every two shares exceeding twenty and not exceeding two hundred; and one vote for every five shares exceeding two hundred, and not exceeding five hundred; and one vote for every ten shares exceeding five hundred; and each ballot shall have endorsed thereon the number of shares thereby represented; but no person or party (females,

sick persons, and absentees from the county excepted) residing within ten miles of the place appointed for every such election or general meeting, shall be entitled to vote by proxy, nor shall any proxy be recived, nor entitle the holder thereof to vote, unless the same be duly dated and executed within twelve months next preceding such election or general meeting; and every such proxy received and voted upon as aforesaid shall be retained and filed amongst the papers of the company until after the next annual meeting, or election, subject to the inspection or examination of any stockholder who may desire it.

§ 7. The company shall have power, by themselves or agents, to enter upon and take from any land in the neighborhood of the line of their railroad, earth, gravel, stone, wood, water, or other material necessary for the construction or operation of said road; and for the purpose of procuring water for their use, may lay pipes,
31 erect pumps, dams, and reservoirs, if the owner of said land and
the said company shall agree upon the damages they may do to said lands and its appurtenances; or if they cannot agree, the damages shall be ascertained by three disinterested householders, who, being appointed for that purpose by any justice of the peace, thereto required by either of the parties, shall be sworn by him, and shall then ascertain the compensation upon their own view of the ground, and of the road, earth, stone or gravel which may have been taken therefrom, and the injury done in taking them: *Provided, however*, That it shall be the duty of the party making the application to show the justice of the peace that ten days' previous notice of the time of making the same has been given to the other party, or to some one of them; and no award which may be given under any appointment without such notice shall be obligatory or binding upon either party; and either party not satisfied with the award, may appeal to the circuit court of the county in which said lands may lie, which may, at its discretion, confirm the said award and enter it of record, or as often as they may deem it necessary, may supersede the viewers, or any of them, appoint others in their stead, and direct another view or award to be made in the manner aforesaid. If any justice or freeholder shall refuse or neglect to perform the duties assigned them respectively, as prescribed in this section, upon being thereto required by either party as aforesaid, such justice or freeholder shall forfeit and pay to such person making the application a sum not exceeding twenty-five dollars, to be recovered before any justice of the peace of which he is an inhabitant, and shall moreover be liable to the action of the party aggrieved.

§ 8. The capital stock, together with all machines, wagons, cars, engines, or carriages belonging to the company, together with
32 all their works and other property, and all profits which shall
arise from the same shall be vested in the respective shareholder of the company forever, in proportion to their respective shares, and the same shall be deemed personal estate, and shall be

exempt from any public charge or tax whatever for the period of five years from and after the passage of this act; the said company shall have power, from time to time, to borrow such sums of money as may be necessary, subject to the prior lien of the State for completing and finishing or operating their railroad, and issue and dispose of their bonds for any amount so borrowed not exceeding their unsubscribed capital, and to mortgage, if necessary, their corporate property and franchises, or any part thereof, to secure the payment of any debt contracted by the company as aforesaid, and the directors of the company may confer on any holder of any bonds issued for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company, at any time not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt.

§ 9. When payment for the stock of any subscriber or stockholder shall be fully paid, the president and directors shall deliver one or more certificates of such stock, signed by the president and countersigned by the treasurer, under the seal of the company, to such subscriber or stockholder for the number of shares belonging to him or her, which certificate shall be transferable in a book to be kept for that purpose by the company, and, when transferred, shall be delivered up to the president and cancelled, and new certificates be issued the assignees. All assignment of shares partially paid in shall be entered upon the books of the company; but such assignment shall in nowise exempt the assignor or his representatives
from liabilities for the payment of all sums due upon the
33 stock assigned by him, if the assignee or his representatives
fail to pay the same.

§ 10. Dividends of so much of the profits of said company as shall appear advisable to the directors shall be declared semi-annually, and be paid to the stockholders or their legal representatives on application at the office of said company any time after the expiration of ten days from the time of declaring the same; but the dividends shall in no case exceed the actual amount of net profits of said company, so that the capital stock shall never be impaired thereby; and if the said directors shall make any dividends which shall impair the capital stock of said company, the directors consenting thereto shall be liable, in their individual capacities, to the company for the amount of capital stock so divided, and each director present when such dividend shall be declared shall be considered as consenting thereto, unless he immediately enter his protest on the minutes of the board and give public notice to the stockholders of the declaring of such dividend.

§ 11. The said corporation shall make an annual report to the Secretary of State of the operations of the year ending on the first day of December, which shall be verified by the oath of the treasurer and acting superintendent of operations, and file in the office of the Secretary of State, by the third Monday in December in each year, and shall state first the capital stock and the amount paid in.

Second. The amount expended for the purchase of land for the construction of the road, for buildings, and for engines, and for cars respectively. Third. The amount and nature of its indebtedness and the amount due the corporation. Fourth. The amount received for the transportation of passengers, of mails, of property, and from all other sources. Fifth. The amount of freight, specifying the quantity in tons, of the products of the forests, of animals, of vegetable food, other agricultural products, manufactures, merchandise, and other
34 articles. Sixth. The amount paid out for repairs. Seventh. The number and amount of dividends, and when made. Eighth. The number of engine-houses and shops, of engines and cars, and the character. Ninth. The number of miles run by passenger, freight, and other trains respectively. Tenth. The number of men employed and their occupation. Eleventh. The number of persons injured in life or limb, and the cause of such injuries. Twelfth. Whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

§ 12. If any passenger shall refuse to pay his fare or toll, it shall be lawful for the conductor of the train, and other servants of the corporation, to put him out of the cars at any usual stopping place the conductor may select.

§ 13. In forming a passenger train, baggage, freight, merchandise, or other lumber cars shall not be placed in the rear of passenger cars, and if they, or any of them, shall be so placed, and any accident shall happen to life or limb, the officer or agent who so directed, or knowingly suffered such arrangement, and the conductor and engineer of the trains shall each and all be held guilty of intentionally causing the injury, and shall be punished accordingly.

§ 14. A steam-whistle shall be placed on each locomotive engine, and be sounded at the distance of at least forty rods from the place where the railroad shall cross any road or street, and be kept sounding until it shall have crossed; and the said company shall be liable for all damages which shall be sustained by any person by reason of neglect thereof.

§ 15. If any person while in charge of a locomotive engine, running upon the railroad of said company, or while acting as a conductor of a car train on said railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

§ 16. If any person shall willfully do, or cause to be done,
35 any act or acts whatsoever, whereby any building, construction, or work of said company, or any engine, machine or structure, or anything appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the said company treble the amount of damages sustained by means of such offense.

§ 17. If any person shall willfully or maliciously place any obstruction upon the line of said railroad, whereby the lives of passengers thereon shall be endangered, such person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months, or in the penitentiary for a term not more than five years: *Provided*, That nothing herein contained shall prevent the company from pursuing any other proper civil remedy at law in such cases.

§ 18. The power for condemning lands for the right of way granted by the law regulating corporations shall be construed to include necessary lands required for depots, engines, and warehouses, machine shops, water stations, stages, and turn-outs.

§ 19. The said company shall commence the construction of said road within ten years after passage of this act, and may, from time to time, construct so much thereof as may be in the ability of said company.

§ 20. The directors shall appoint agents, clerks, engineers, superintendents, and other officers and servants for said company; shall keep a journal of their proceedings; shall cause correct books and accounts to be kept; they may determine by law what number of directors shall constitute a quorum, and may appoint committees, fill all vacancies in any office under said company; they shall fix the salaries of the officers and agents of said company, they
36 may take security from their officers and agents; may adopt such measures and acts as will be best calculated to promote the prosperity and interest of said company.

§ 21. The directors shall make and advertise calls for the payment of capital stock at such times and in such manner as they may deem proper, and if any stockholder shall fail to pay such requisition within ten days after the time appointed, said company may recover the same with interest, and if not collected may declare the stock forfeited, and sell the same; and no delinquent stockholder shall vote in said company.

§ 22. Said company may take voluntary relinquishments of the right of way for said road and the necessary depots and water stations; and if the land through which said road shall pass shall belong to minors, in whole or in part, the guardian or curator shall have power to convey to said company so much of said land as may be necessary for the purpose aforesaid, on fair and equitable terms; but every such conveyance by a guardian shall be subject to the approval or rejection of the probate or county courts in which such guardianship is pending.

§ 23. If any owner of any tract of land through which said road shall pass shall refuse to relinquish the right of way for said road to said company, or if the owner be infants or persons of unsound mind, or non-resident of the State, the facts of the case shall be specifically stated to the judge of the circuit court of the county in which said lands are situated, and said judge shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the lands and the advantages and disadvantages of the road to the same, and shall report under

oath what damages are done to the same, or any improvement
thereon, stating the amount of damages assessed, and shall return
a plat of the lands thus condemned. Notice of such appli-
37 cation to such judge shall be given to the owner of such
land five days before the making of the application, if such
owner reside in the State, or to his guardian; and if such owner
be a non-resident of this State he may be served with actual notice,
or by an advertisement four weeks in some public newspaper.

§ 24. The persons appointed to view and value such land shall file their report and plat in the office of the clerk of the circuit court of the county in which the land or any part thereof is situated; and if no valid objections be made to said report, the court shall enter judgment in favor of such owner against such company for the amount of damages assessed, and he shall make an order vesting in said company the fee simple title of the land in such plat and report described; objections to such report must be filed within ten days after the same shall be filed, which objections shall be examined by said judge in term time, or in vacation, and by judgment confirm said report, or may set the same aside and appoint three other viewers, who shall proceed in the same manner, and make their report, until a report is confirmed: *Provided*, That in order that the work of construction of said road may not be impeded, that after said viewers have made and filed their report and plat in the office aforesaid, the company after having made a tender of the amount of damages to the person or persons, or made a deposit of the same with the clerk of the county court in which the case may be pending, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arisen. In all such cases the court shall adjudge the costs of such proceedings according to equity, and the court shall have power to make such order and
take such other steps as will promote the end of justice between
the owners of such land and the company.

38 § 25. Said company may build said road along or across
any State or county road, street, wharves of any city or town,
and over any stream or highway; but whenever said road shall cross any State or county road, said company shall keep good and sufficient causeways or adequate facilities for crossing the same; and said railroad shall not be so constructed as to prevent the public from using any road, street, or highway, along or across which it may pass; and when said railroad shall be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a drawbridge, so that in no case shall the free navigation of said river be obstructed. When any person shall own lands on both sides of sad road, said company, when required to do so, may make and keep in good repair one causeway or other adequate means of crossing the same.

§ 26. Said company shall commence the construction of said road within ten years of the passage of this act, and shall complete the same within twenty years thereafter; and said company shall have power to use, manage, control, and enjoy said road; shall determine what kind of carriages shall be used thereon, and by whom, and in what manner; and shall determine the terms, conditions, and manner in which merchandise, passengers, and property shall be transported; and shall have power to construct and keep such turnouts, gates, bridges, culverts, toll-houses, depots, warehouses, causeways, and other buildings, machineries and fixtures as may be necessary; said company may receive such tolls and freights as may be determined upon by the directors, and shall keep posted up rates of toll and freight to be charged.

§ 27. Dividends of the profits of the company shall be made annually, and oftener, if necessary; but the directors may reserve or set apart a portion of the profits as a contingent fund to meet the expenses and losses.

§ 28. On every annual meeting of said company the direct-
39 ors shall make to the stockholders an exhibit of the affairs and
condition of the company.

§ 29. It shall be lawful for the county court of any county in which any part of the route of said railroad may be to subscribe to the stock of said railroad company, and it may invest its funds in stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interest and credit of the county. Such county court may appoint an agent to represent the county, vote for it, and receive its dividends; and any city, town, or incorporated company may subscribe to the stock of said railroad company, and appoint an agent to represent its interest, give its vote, and receive its dividends, and may take proper steps to guard and protect the interests of said city, town, or incorporation.

§ 30. When said road shall be completed, the company shall file a plat thereof in the office of the secretary of State, and the Legislature may at any time require a statement from the company as to the progress of the work, the amount of business, and the receipts of the company; and the books and accounts of said company may at any time be investigated by a committee appointed by the General Assembly.

§ 31. Said company shall keep a fair record of the whole expense of constructing said road, and at the end of fifty years the State shall be at liberty to purchase said road by paying to said company the amount which it shall be valued at by persons to be mutually chosen by the State and by said company. But two years' notice shall be given to said company of the intention of the State to purchase said railroad.

§ 32. When any person shall cease to be a stockholder, he shall cease to be a member of this company.

§ 33. The operation of said company shall be confined to the gen-
eral business of locating, constructing, making and using said
40 railroad, and the acts necessary to carry the same into com-
plete and successful operation.

§ 34. Said company shall have power to receive and hold loans, gifts, grants and donations of lands, money, or bonds, in any quantity, from this State, or the United States, and may sell, convey, pledge, or otherwise dispose of said land, money, or bonds, or any part thereof, and apply the proceeds of the same to the construction of said railroad.

§ 35 Said company shall have power to mark out, locate, and construct a railroad from the city of Louisiana, in the county of Pike, by way of Bowling Green, in said county, to some suitable point on the North Missouri railroad, intersecting said road between the southern limits of the town of Wellsburg, in Montgomery county, and the northern limits of the town of Mexico, in Audrain county, thence to the Missouri river at the most eligible point, on a line the most suitable and advantageous as regards distance, grade, cost of road, and permanent value of same.

§ 36. This act, and the company hereby incorporated, are exempt from the seventh, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth section of the first article of the act concerning corporations, approved November 23d, 1855.

This act to be in force from and after its passage.

Approved March 10, 1859.

2d. That the charter of the Louisiana and Missouri River Railroad Company was amended on March 24th, 1868, as follows:

An act to amend an act entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," by increasing the amount of the capital stock of said company, defining more explicitly the power of the board of directors to fix the western terminus of said road, authorizing the location and construction of a branch road, and conferring upon said board the necessary powers
to carry into effect the several objects contemplated by this
41 charter, and also by striking out sections eleven, eighteen,
twenty-seven, thirty, and thirty-one of said act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. A company is hereby incorporated, called "The Louisiana and Missouri Railroad Company," the capital stock of which shall be ten millions of dollars, to be divided into shares of one hundred dollars each, the holders of which, their successors and assigns, shall constitute a body politic and corporate, and by that name shall have continued succession, may sue and be sued, plead and be impleaded in all the courts of this State; may make and use a common seal, and change or alter the same at pleasure; shall be able in law and equity to make contracts; may take, hold, possess, and enjoy the fee simple or other title in and to any real estate, and may sell, convey, or mortgage the same; and may make by-laws and regulations not repugnant to the laws or Constitution of the United States, or of this State, and shall have and exercise all the powers that may be necessary and proper to carry into effect the purposes of this act.

SEC. 2. Edwin Draper, John B. Henderson, James O. Broadhead, Josephus Irvine, Aaron McPike, William L. Gatewood, Thomas J. C. Fagg, Simeon T. Robinson, Silas W. Furber, William C. Hardin, Robert Allison, and Hiram Womack, of Pike county; Mortimer McIlhaney, John P. Clark, Norman Lackland, Preston B. Reed, Robert W. Sinclair, and Armsted Botts, of the county of Audrain; Samuel Crutcher, Josiah Whitsides, Benjamin Sharp, and William R. Harris, of the county of Montgomery, or any nine of them, shall constitute the first board of directors under this act, and shall hold their offices until their successors be qualified. They shall, within ten years after the passage of this act, meet at such time and place as shall be designated by any three of them, and organize as a board of directors; and when organized, they
42 shall cause books to be opened for the subscription of the capital stock of said company, at such time and place as they shall designate, under the supervision of such persons as they may appoint; may continue such books open as they may deem proper, and at any time reopen the same when necessary, until the whole amount of stock shall be subscribed.

SEC. 3. So soon as fifteen hundred shares shall be subscribed the directors shall cause an election to be held for nine directors at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

SEC. 4. The stockholders of said company shall meet on the first Monday in May, in each year, at such place as may be designated by the by-laws of said company, of which at least twenty days' previous notice shall be given in two or more newspapers published in this State, and choose by ballot by a majority of the votes present, to be given in person or by proxy, in the manner provided for in the by-laws, thirteen directors, owners of stock in the company; the said directors, and those hereafter to be chosen in pursuance of the provisions of this act, at their first meeting, shall choose by ballot one from their number as president of said company; and said president and directors shall direct the affairs of said company, and hold their respective offices for the term of one year, and until their successors are duly elected and qualified.

SEC. 5. At every annual meeting the stockholders shall have power, by a majority of the votes given, to alter or repeal their by-laws and regulations, and may meet at such other times and places as may be appointed by the president and directors upon such notice as may be prescribed by the by-laws of the company; and the president, at the request in writing of any number of the stockholders representing not less than one-seventh in number and interest, shall cause a special meeting to be held at the point designated in
43 such request, upon giving the like notice of the time, place, and objects of the meeting. Such objects, and no others, shall be acted upon at such meeting, and no business shall be trans-

acted at such meeting unless a majority of all the stockholders be there represented; but the meeting may adjourn from day to day until such majority shall be represented.

SEC. 6. The election for directors shall be conducted in the following manner: The directors for the time being shall appoint three stockholders, being neither directors nor candidates, who shall take and subscribe an oath or affirmation, before some officer authorized to administer oaths for general purposes, well and truly, according to law, to conduct said election to the best of their knowledge and ability; the judges so chosen and qualified shall decide upon the qualifications of the voters, and when the election is closed count the votes and declare who has been elected. In case no election shall be held at the time specified, the corporation shall not by that reason be dissolved, but it shall be lawful to hold an election for directors any day thereafter, by giving at least ten days previous notice of the time and place of holding said election, in the newspapers aforesaid. In case of the death, resignation, or removal from this State of a director, the vacancy thus occasioned shall be filled by the board at its first regular meeting thereafter, or, upon a failure to meet at such time, as soon thereafter as the board can be called together for that purpose. At all general meetings or elections by the stockholders, each share of stock under the number of twenty shall entitle the holder to one vote, and each stockholder having over the number of twenty shares shall have one vote for every two shares exceeding that number and not exceeding two hundred; one vote for every five shares exceeding two hundred and not exceeding five hundred; one vote for every ten shares exceeding five hundred. Each ballot shall have endorsed thereon the number of shares thereby represented; but no person, (females, sick persons,
44 and non-residents of the county where the election is held,)
residing within ten miles of the place of general meeting, or such as may be selected for the holding of an election, shall be entitle to vote by proxy, nor shall any proxy be received or entitle the holder thereof to vote, unless the same be duly dated and executed within twelve months next preceding such election or general meeting; and every such proxy received and voted upon as aforesaid shall be returned and filed among the papers of the company until after the next annual meeting or election, subject to the inspection or examination of any stockholder who may desire it.

SEC. 7. The company shall have power, by themselves or agents, to enter upon and take from any land in the neighborhood of the line of their railroad, earth, gravel, stone, wood, water, or other material necessary for the construction or operation of said road; and for the purpose of procuring water for their use, may lay pipes, erect pumps, dams, and reservoirs, if the owners of said land and the company shall agree upon the damages thereby occasioned to the said lands and appurtenances; or, if they cannot agree, the damages shall be ascertained by three disinterested householders, who, being appointed for that purpose by any justice of the peace thereto required,

by either of the parties, shall be sworn faithfully to perform the duties enjoined upon them, and shall then ascertain, upon their own view of the ground, and the materials so taken, the amount of compensation to be awarded for the injury done such owner; provided, however, that in all cases it shall be shown to the satisfaction of the justice that ten days previous notice of such application, and the time and place of making the same, has been given to the other party. Either party not satisfied with such award may appeal to the circuit court of the county in which said lands may lie, which may at its discretion confirm the same and enter it of
record, or as often as may be deemed necessary, may super-
45 sede the viewers, or any of them, appoint others in their
stead, and direct another view and award to be made, in the
manner aforesaid. If any justice of the peace or freeholder shall neglect or refuse to perform the duties herein enjoined upon him without a reasonable excuse therefor, he shall forfeit and pay to the party making such application the sum of twenty-five dollars, to be recovered by civil action before any justice of the peace of the county in which he is a resident, and such recovery shall be no bar to an action by the party aggrieved before any court of competent jurisdiction for the amount of damages sustained thereby.

SEC. 8. The capital stock, together with all machines, wagons, cars, engines, or carriages belonging to the company, as well as all their works and other property, and all profits which shall arise from the same, shall be vested in the respective shareholders of the company forever, in proportion to their respective shares, and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatever for the period of five years from and after the passage of this act. The said company shall have power from time to time to borrow such sums of money as may be necessary for completing, equipping, or operating their said road, not to exceed in the aggregate a sum equal to fifteen thousand dollars per mile of the entire line of said road, and may issue and dispose of its bonds in such sums as may be deemed best, to bear interest at such rate not exceeding ten per cent. per annum, payable when and where the board may direct, and to run for such period of time as the best interests of the corporation may require, not exceeding twenty years; and said bonds, when so issued and negotiated, shall constitute a first mortgage or lien upon said road and upon all the corporate property and franchises of the said company. The board of directors may, at any time, and under such regulations as may
be deemed necessary and proper, confer upon the holder of
46 any bonds issued as aforesaid the right to convey the amount
due and owing thereon into stock of said company.

SEC. 9. When payments for the stock of any subscriber shall be fully made, the board of directors shall cause one or more certificates of such stock, signed by the president and countersigned by the secretary, under the seal of the company to be delivered to the party entitled thereto, or in case of his or her death, then to the personal representative of such deceased person, which certificates shall be transferable upon the books of the company only, and when so transferred shall be delivered up to the president and cancelled, and others issued to the assignees in lieu thereof, all assignment of shares partially paid in shall be entered upon the books of the company; but such assignment shall in no wise exempt the assignor or his representative from liability for the payment of any sum remaining unpaid upon the stock so assigned if the assignee or his representatives shall fail or refuse to pay the same.

SEC. 10. Dividends of so much of the profits of said company as shall appear advisable to the board of directors shall be declared semi-annually, and be paid to the stockholders or their representatives, on application at the office of said company, at any time after the expiration of ten days from the time of declaring the same; but the dividends shall in no case exceed the actual amount of net profits of said company, so that the capital stock shall never be impaired thereby; and if the said board shall make any dividends which shall impair the capital stock of said company, the directors consenting thereto shall be liable, in their individual capacities, to the company for the amount of capital stock so divided; and each director present when such dividend shall be declared shall be considered as consenting thereto, unless he immediately enter his protest on the minutes of the board, and give public notice to the stockholders of the declaring of such dividend. Nothing
47 contained in this section shall be so construed as to take away
from the board of directors the power to reserve and set apart such portion of the profits as may seem necessary as a contingent fund to meet any losses or expenses that may be incurred in operating the road.

SEC. 11. So soon as the board of directors shall be chosen and organized, as hereinbefore directed, it shall, in addition to the election of a president, proceed to choose, by ballot, a secretary and treasurer, neither of whom shall be a member of said board, and who shall before entering upon the duties of their said offices execute, respectfully, a good and sufficient bond, conditioned for the faithful discharge of the duties imposed upon them by this act, or by any order or requirement of the said board; said bonds shall be payable to the order of said company by its corporate name, and the amount of penalty, as well as the number and character of the sureties to each, shall, in every case, be fixed and determined by the board. The said officers shall hold their respective offices for the term of twelve months, (unless sooner removed by the board for good cause,) and until their successors are duly chosen and qualified.

SEC. 12. The board of directors may from time to time appoint such agents, clerks, engineers, superintendents and other officers, servants, and employees of said company as the business and interests of the company may seem to require; shall cause a correct journal of its proceedings, as well as correct books and accounts of all its transactions to be kept, which shall, at all times, be open to

the inspection of any stockholder or other person interested in said company; it shall determine by its by-laws what number, not less than a majority of the whole, shall constitute a quorum for business; may appoint committees, and fill all vacancies in any office under said company. It shall likewise fix the amount of salaries to be paid to each of the officers, agents, and others herein
48 authorized to be appointed; take such security for the discharge of their duties as it may direct, and in general adopt all such measures and acts as will be best calculated to promote the prosperity and interest of said company.

SEC. 13. The board shall make and advertise calls for the payments of capital stock at such time and in such manner as it may deem proper, and if any stockholder shall fail to pay such requisition within ten days after the time appointed, the same may be recovered with interest, and, if not collected, his stock may be declared forfeited and sold. No delinquent stockholder shall vote at any election held by said company.

SEC. 14. Said board may take voluntary relinquishment of the right of way for said road, as well as conveyances of land for the necessary depots, warehouses, engine houses, machine shops, water stations, stopping stages, and turnouts; and if such lands shall belong to minors, in whole or in part, the guardian or curator, under the directions and approval of the court having the proper jurisdiction, may convey to the said company so much as may be required for said purposes.

SEC. 15. If the owner of any tract of land through which said road shall pass shall refuse to relinquish the right of way to the company, or to make a voluntary conveyance of the land necessary for the purposes mentioned in the preceding section, or if such owner be an infant person of unsound mind, or non-resident of the State, the facts of the case shall be specifically stated to the circuit court of the county in which said lands are situated, and said court shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the lands, and the advantages and disadvantages of the road, and its appurtenances to the same, and as soon as may be report, under oath, what damages are done to the same or any improvement thereon, stat-
49 ing the amount of damages assessed, and shall return a plat of the lands thus condemned. Notice of such application shall be given to the owner of the land, or if he be a minor, then to his guardian, at least five days previous thereto if such owner be a resident of this State; if a non-resident, by the service of actual notice or publication in some newspaper printed in this State for four successive weeks prior to the time of making the same.

SEC. 16. If no valid objection be made to the report of the viewers as provided for in the preceding section, the court shall, within three days after the filing of the same, if the term shall continue so long, if not, then before the end of such term, enter up a judgment in favor of the owner of such lands, and against the company, for the amount of damages assessed, and an order shall also be made vesting in said company for the purposes aforesaid, the title of the land in such plat and report described. The court for any sufficient cause appearing, may set aside the said report and appoint three other persons of like qualifications, who shall proceed in the same manner, and make their report until a report is confirmed; provided, that, in order that the work of construction of said road may not be impeded, after said viewers have made and filed their report and plat, as aforesaid, the company, after having made a tender of the amount of damages to the person entitled thereto, or made a deposit of the sum with the clerk of the court in which the case is pending, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arisen in reference thereto. In all such cases the costs shall be adjudged according to the equity between the parties, and the court shall have power to make such orders, and to take such other steps as will promote the ends of justice between the owners of such lands and the company.

SEC. 17. Said company may build said railroad along or across any State or county road, or wharves of any city or town, and
50 over any stream or highway, but whenever said road shall cross any State or county road, said company shall keep good and sufficient causeways or adequate facilities for crossing the same, and said road shall not be so constructed as to prevent the public from using any road, street, or highway along or across which it may pass; and when said railroad may be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a draw-bridge, so that in no case shall the free navigation of said river be obstructed. When any person shall own lands on both sides of said road, said company, when required to do so, shall make and keep in good repair one causeway, or other adequate means of crossing the same.

SEC. 18. The company hereby incorporated shall commence the construction of the said road within ten years after the passage of this act, and shall complete the same within twenty years thereafter, and shall have power to use, manage, control, and enjoy the same; shall determine what kind of carriages shall be used thereon, and by whom and in what manner; shall determine the manner, terms, and conditions in which merchandise, passengers, and property shall be transported, subject to the provisions of section thirty-four of this act, and shall construct and keep such turnouts, gates, bridges, culverts, houses, depots, warehouses, and other buildings, machinery and fixtures as may be necessary to the completion and operation of the road. The rates of transportation for passengers and freight shall be fixed by the board of directors, and the same shall be kept posted up in all the depots and public offices of the company for the inspection of the public.

SEC. 19. At every annual meeting of the company, the board shall make to the stockholders a full exhibit of the affairs and conditions of the said corporation.

SEC. 20. It shall be lawful for the county court of any county
51 in which any part of the line of said railroad may be located,
to subscribe to the stock of said company, and issue the bonds of the county to raise funds to pay the stock thus subscribed, said bonds to bear interest not exceeding ten per cent., payable semi-annually, and to take proper steps to protect the interest and credit of the county. Such county court may appoint an agent, who shall be duly authorized to cast the vote of the county at all elections held by said company, receive its dividends, and, in general, to represent its interest in all matters pertaining to the said road. Any city, town, or incorporated company may subscribe to the capital stock of said railroad company, and appoint an agent with the same power and authority herein given to county agents, and may take all proper steps to guard and protect the interests of said city, town, or incorporation.

SEC. 21. The said company shall have power to mark out, locate, and construct a railroad from the city of Louisiana, in Pike county, by the way of or near the town of Bowling Green, in said county, and thence to such point on either the north or south bank of the Missouri river as may be selected by the board of directors; the said road to be located between the points thus indicated, on a line the most suitable and advantageous as regards distance, grade, cost of road, and permanent value of the same. This act shall be so construed as to authorize the location of the line of said road across the Missouri river at any point that may seem most suitable for that purpose, and that may best subserve the interests of the company.

SEC. 22. It shall be lawful for the said company to mark out, locate, and construct a branch of its said road, commencing at a point on the line thereof, to be selected by the board, not further east than the town of Bowling Green. in Pike county, and running thence by the most practicable and advantageous route to any point on the Missouri river between the town of St. Aubert, in
Osage county, and the city of Boonville, in Cooper county.
52 Said branch road shall be known and designated as the
"South Branch of the Louisiana and Missouri River Railroad," and all subscriptions to the capital stock of said company, intended to be used in the construction of said branch, shall be made in separate books, opened under the direction of the board at such places as may be selected for that purpose. Such subscriptions shall specifically designate the objects for which they are made, and no part of the funds paid thereon shall be used in the construction of the main line of said road, but shall be faithfully applied to the building of such branch.

SEC. 23. All of the powers and privileges herein conferred upon the board of directors in connection with the main line of said road shall likewise be exercised and enjoyed fully in the construction of the branch road herein provided for, and the same shall be constructed, operated, and managed in all respects in the same manner.

SEC. 24. When any person shall cease to be a stockholder he shall cease to be a member of this company.

SEC. 25. The operations of said company shall be confined to the general business of locating, constructing, and using said roads and the acts necessary to carry the same into complete and successful operation.

SEC. 26. Said company shall have power to receive and hold loans, gifts, grants, and donations of lands, moneys, or bonds, in any quantity from this State or the United States, and may sell, convey, pledge, or otherwise dispose of the same, or any part thereof, and apply the proceeds to the construction of said road.

SEC. 27. If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train, or other servants of the corporation, to put him out of the cars at any usual stopping place the conductor may select.

SEC. 28. In forming a passenger train, baggage, freight, merchandise, or other lumber cars shall not be placed in the rear of passenger cars, and if they or any of them shall be so placed, and any accident shall happen to life or limb, the officer or agent
53 who so directed or knowingly suffered arrangements, and the
conductor and engineer of the train shall each and all be held guilty of intentionally causing the injury, and shall be punished accordingly.

SEC. 29. A steam whistle shall be placed on each locomotive engine, and be sounded at the distance of at least forty rods from the place where the railroad shall cross any road or street, and be kept sounding until it shall have crossed; and the said company shall be liable for all damages which shall be sustained by any person by reason of neglect thereof.

SEC. 30. If any person, while in charge of a locomotive engine running upon the railroad of said company, or while acting as a conductor of a car train on said railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

SEC. 31. If any person shall willfully do, or cause to be done, any act or acts whatsoever, whereby any building, construction, or work of said company, or any engine, machine, or structure, or anything appertaining to the same shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the said company treble the amount of damages sustained by means of such offense.

SEC. 32. If any person shall willfully or maliciously place any obstruction upon the line of said railroad, whereby the lives of passengers thereon shall be endangered, such person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months, or in the penitentiary for a term not more than five years; provided, that nothing herein contained shall prevent the company from pursuing any other proper civil remedy at law in such cases.

SEC. 33. This act, and the company hereby incorporated, are exempt from the seventh, thirteenth, fifteenth, sixteenth,
54 seventeenth, eighteenth, and nineteenth sections of the first
article of the act concerning corporations, approved November 23d, 1855.

SEC. 34. The said railroad company shall be subject to the provisions of the general laws of the State now in force, or hereafter to be enacted, applicable to the railroads in the State, in reference to the regulations, the rates or charges for transportation of freight and passengers on said road and its branch or branches; provided, that the foregoing provisions in regard to future legislation shall not take effect until ten years after the passage of this act. Said company shall file their acceptance of all the provisions of this act within ninety days from the passage thereof, in the office of the Secretary of State, signed by the president and secretary of said company, and attested with the seal thereof; and if such acceptance is not filed within said time, this act shall be null and void, and of no effect.

Approved March 24th, 1868.

The acceptance of the act as filed in the office of the Secretary of State, is in words and figures as follows, to wit:

STATE OF MISSOURI, *ss:*

I, Michael K. McGrath, Secretary of the State of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of an acceptance by the Louisiana and Missouri River Railroad Company of the provisions of an act of the General Assembly of the State of Missouri, entitled "An act to amend an act entitled 'An act to incorporate the Louisiana and Missouri River Railroad Company,' etc.," approved March 24th, 1868, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of office of the Secretary of State. Done at the city of Jefferson, this twenty-second day of January, A. D. eighteen hundred and eighty-one.

[SEAL.] MICHAEL K. McGRATH,
Secretary of State.

55 OFFICE LOUISIANA AND MISSOURI RIVER R. R. COMPANY,
LOUISIANA, MO., *May 25th*, 1868.

We, the undersigned president and secretary of the Louisiana and Missouri River Railroad Company, hereby certify that, at a meeting of the stockholders of said company, held at the office of the company, in this city, on this 4th day of May, 1868, all the provisions of an act entitled an act to amend an act entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," increasing the capital stock of said company, defining more explicitly the powers of the board of directors, fixing the western terminus of the road, and authorizing the location and construction of a branch, approved March 24th, 1868, were fully accepted by the stockholders: and at a meeting of the board of directors of the said Louisiana and Missouri River Railroad Company, held the day following, May the 5th, 1868, at the office of the company, in the city of Louisiana, all the provisions of the above-recited act were accepted by [over] the board of directors and the resolution of acceptance entered upon the records of said company.

[Five cent revenue stamp.]
[SEAL.]

HENRY V. P. BLOCK,
Pres't Louisiana and Missouri River Railroad Co.
ALEXANDER J. REID,
Sec'y Louisiana and Missouri River Railroad Co.

Filed May 27th, 1868.

FRANCIS RODMAN,
Secretary of State.

3d. That the following orders were made by the county court of Howard county, to wit:

Order, November 4th, 1868.

STATE OF MISSOURI,
County of Howard, } *ss:*

In the County Court, November 4th, 1868.

Among the proceedings had in said court on the day and year aforesaid, were the following, to wit:

It is ordered by the court that the following proposition be made to the board of directors of the Louisiana and Missouri River
56 Railroad Company to wit: Howard county will subscribe four hundred thousand dollars to the capital stock of the said railroad, payable in her bonds at par, such bonds to be payable in such time and manner as said county court shall hereafter prescribe, to bear eight per cent. interest from the date of issue, on the following conditions:

First. The road to run on the most practicable route from Mexico to Fayette, in Howard county, and from thence to the Missouri river, at Glasgow. 2d. The work of grading and bridging the same to be begun in good faith in said county within six months, and vigorously prosecuted, and the road to be completed and the cars running thereon from Mexico to the Missouri river, in Howard county, within two years. 3d. The boa[r]d to furnish to the county court of Howard county, before issuing said bonds, sufficient evidence of their ability to furnish the iron and rolling stock. 4th. Bonds of the county for seventy thousand dollars to be issued to the company when one-fifth of the grading and bridging in the county is completed, to be determined by the report of an agent of the county;

and the same amount for every fifth of grading and bridging reported completed by said agent. 5th. Bonds for the balance of said subscription to be issued to the company when the grading, bridging, and tieing of said road in the county are completed. 6th. A depot to be established and kept within six hundred yards of the court-house at Fayette, and a depot to be established and kept at the city of Glasgow.

This proposition withdrawn if the same is not accepted by the boa[r]d, and the acceptance filed in the clerk's office of this court within thirty days from this date. * * *

Order of December 23d, 1868. Order of Subscription.

STATE OF MISSOURI,
County of Howard, } *ss:*

In the County Court, December 23d, 1868.

Among the proceedings had in said court on the day and year aforesaid were the following, to wit:

57 The court appoint Andrew J. Herndon, commissioner of the county of Howard, to subscribe four hundred thousand dollars ($400,000) to the capital stock of the Louisiana and Missouri River Railroad Company, upon the terms and conditions set out in the order of this court made on the 4th day of November, 1868, with the additional condition that the depot to be established and kept at Glasgow, shall be established and kept within the county of Howard, at the city of Glasgow, which said conditions are in the words and figures following, to wit: "Howard county will subscribe four hundred thousand dollars to the capital stock of the Louisiana and Missouri River Railroad Company, payable in her bonds at par, such bonds to be payable in such time and manner as said county court shall hereafter prescribe, to bear eight per cent. interest from the date of issue, on the following conditions: First, the road to run on the most practicable route from Mexico to Fayette, in Howard county, and from thence to the Missouri river, at Glasgow. 2d. The work of grading and bridging the same to be begun in good faith in said county within six months (from 4th November, 1868,) and vigorously prosecuted, and the road to be completed and cars running thereon, from Mexico to the Missouri river, in Howard county, within two years. 3d. The board to furnish to the county court of Howard county, before issuing said bonds, sufficient evidence of their ability to furnish the iron and rolling stock. 4th. Bonds of the county for seventy thousand dollars to be issued to the company when one-fifth of the grading and bridging in the county is completed, to be determined in the report of an agent of the county, and the same amount for every fifth of grading and bridging reported completed by said agent. 5th. Bonds for the balance of said subscription to be issued to the company when the grading, bridging and tieing of said road in the county

are completed. 6th. A depot to be established and kept
58 within six hundred yards of the court-house at Fayette, and a depot to be established and kept at the city of Glasgow, within the county of Howard. * * *

Order of Acceptance of Dec. 23d, 1868.

STATE OF MISSOURI,
County of Howard, } *ss:*

In the County Court, December 23d, 1868.

Among the proceedings had in said court on the day and year aforesaid, were the following, to wit:

Andrew J. Herndon, clerk of this court, presents to the court a copy of the resolutions of the board of directors of the Louisiana and Missouri River Railroad Company, adopted by said board of directors, on the 6th day of November, 1868, and filed in the office of the clerk of this court on the 11th day of November, 1868, accepting the proposition of this county, made on the 4th day of Nov., 1868, to subscribe four hundred thousand dollars to the capital stock of said railroad company, upon the conditions set out in the order of this court, made Nov. 4, 1868.

Order of Apr. 16th, 1869.

STATE OF MISSOURI,
County of Howard, } *ss:*

In the County Court, April 16th, 1869.

Among the proceedings in said court, had on the day and year year aforesaid, were the following, to wit:

On the application of the Louisiana and Missouri River Railroad Company, it is ordered by the court that the time for said railroad company to commence work on said Louisiana and Missouri River railroad, within the county of Howard, be, and the same is, hereby extended for five months from the 4th day of May, 1869.

And also the following proceedings were had in said court on the 15th day of November, 1869, to wit;

Order of Nov. 15th, 1869.

On motion of the Louisiana and Missouri [—] Railroad Company by John P. Sebree, a director thereof, it was ordered that the time for beginning work on said road, be, and the same is hereby, extended for six months from this date, and the time for the completion of said road be, and the same is, hereby extended one year from the 4th day of November, 1870, (Judge Heath dissenting. * * *

59 *Order of Sept.* 2, 1869.

STATE OF MISSOURI,
County of Howard, } *ss:*

In the County Court, September 2d, 1869.

Among the proceedings had in said court on the day and year aforesaid, were the following, to wit:

It is ordered by the court that at the request of the Louisiana and Missouri River Railroad Company, the fourth condition of the subscription made by the county to said railroad company for four hundred thousand dollars to the capital stock of said company be modified, as follows:

Bonds of the county to be issued sufficient to cover the monthly estimates of the work made by the company as it progresses—the county shall not be bound to issue more than seventy thousand dollars in bonds for each fifth of the grading and bridging in said county that is completed, to be determined by the report of an agent of the county. It is further ordered that the foregoing order shall not *e*ffect any other condition of said subscription. * * * * *

Order of July 15, 1870.

STATE OF MISSOURI,
County of Howard, } *ss:*

In the County Court, July 15, 1870.

Among the proceedings had in said court on the day and year aforesaid, were the following, to wit:

The court being satisfied that the Louisiana and Missouri [——] Railroad Company has made a contract with a responsible company to furnish the iron and rolling stock for said road, the original subscription to said road is modified as to time of beginning and completing said road in the county as follows, to wit: The company shall begin the work thereon in this county within twenty days after the clerk of this court shall deliver to the agent of said company seventy thousand dollars of the bonds of the county for that purpose, and shall vigorously prosecute the same so as to complete the same within two years from this date. The clerk of this court shall cause to be prepared bonds of the county for four hundred
60 thousand dollars (less the sum of eight thousand and eighty-nine $\frac{23}{100}$ dollars heretofore paid said company on said subscription,) payable to the Louisiana and Missouri River Railroad Company, or bearer, at the National Bank of Commerce, in New York, ten years after date, bearing eight per cent. per annum, interest payable semi-annually at the same place, both principal and interest payable in current funds, with coupons for interest attached, the bonds to be signed by the presiding justice of this court and

attested by the clerk, with the seal of the court, the coupons to bear the signature of the clerk lithographed—the bonds and coupons to be dated when issued, and the clerk shall deliver to the agent of said railroad company seventy thousand dollars thereof, and on the completion of each fifth of the work on said road in this county, the like sum, until three hundred and fifty thousand dollars of said bonds are delivered, and the balance of said bonds shall be delivered when the company is ready to begin laying the iron thereon. Justice Wm. R. Heath dissents from the foregoing order. * *

Order of Mar. 7, 1871.

STATE OF MISSOURI,
County of Howard, } *ss:*

In the County Court, March 7, 1871.

Among the proceedings had in said court on the day and year aforesaid, were the following, to wit:

Satisfactory evidence having been produced to this court that one-fifth of the grading and bridging on the Louisiana and Missouri River railroad in this county has been completed, it is ordered that the clerk of this court deliver to said Louisiana and Missouri River Railroad Company seventy thousand dollars of the bonds of this county. * * * * *

Order of May 3, 1871.

And on the 3d day of May, 1871, the following proceedings were had, to wit:

Satisfactory evidence being presented to the court that one-fifth of the work on the Louisiana and Missouri River railroad, in this county, has been completed since the last issue of bonds to said railroad company, it is ordered that the clerk of this court
61 deliver to said company $70,000 of bonds of the county.

Order of June 12, 1871.

And on the 12th day of June, 1871, the following proceedings were had, to wit:

Andrew J. Herndon, clerk of this court, presents the certificate of M. C. Little, chief engineer of the Louisiana and Missouri River Railroad Company, certifying that up to the 1st day of June, 1871, three-fifths of the estimated cost of the road-bed of said road in Howard county had been completed, and the clerk being satisfied that three-fifths of the work on said railroad in this county had been done by said company, it is ordered that said clerk deliver to said railroad company or its agents seventy thousand dollars of bonds of the county, dated 1st June, 1871. * * * *

Order of August 16, 1871.

And on the 16th day of August, 1871, the following proceedings were had, to wit:

The chief engineer of the Louisiana and Missouri River Railroad Company files a certificate stating that four-fifths of the work on said railroad in this county has been done; the court thereupon order the clerk to deliver to said railroad company seventy thousand dollars of the bonds of the county, to be dated the 1st day of September, 1871. * * * *

Copy of Bond.

4. That the bonds and coupons offered by the plaintiff were in form as follows:

"United States of America. No. ———. Ten years. $1,000. Howard County Bond. Interest eight per cent. per annum, payable on the first days of March and September.

Know all men by these presents: That the county of Howard, in the State of Missouri, acknowledges itself indebted and firmly bound to the Louisiana and Missouri River Railroad Company in the sum of one thousand dollars, (in current funds,) which sum the said county hereby promises to pay to the Louisiana and Missouri River Railroad Company, or bearer, at the National Bank of Commerce, in New York, ten years after the date of this bond, together with interest thereon from date, at the rate of eight per cent. per annum, which interest shall be payable semi-annually, in current funds, on
the presentation and surrender at said bank of the annexed
62 coupons, as they severally become due and payable.

This bond is issued in pursuance of the orders of the county court of Howard county, made respectively on the 23d day of December, 1869, and 15th day of July, 1370, which orders were made in accordance with an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March 10, 1859.

In testimony whereof, the said county of Howard has executed this bond by the presiding justice of the county court of Howard county, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same, and affixing thereto the seal of said court.

Done at the city of Fayette, county of Howard aforesaid, this first day of September, 1870.

[Seal of Howard County Court, Missouri.]

WM. R. HEATH,
Presiding Justice of the County Court of
Howard County, State of Missouri.

Attest:

A. J. HERNDON,
Clerk of the County Court of Howard County, Missouri.

Copy of Coupon.

FORTY DOLLARS.

FAYETTE, HOWARD COUNTY, *September* 1, 1871.

The county of Howard acknowledges to owe the sum of forty dollars, in current funds, on the first day of September, 187—, being six months' interest on bond No. ——— for one thousand dollars, and payable to the Louisiana and Missouri River Railroad Company, or bearer, at the National Bank of Commerce, New York.

A. J. HERNDON,
Clerk of Howard County Court.

Records of L. & M. R. R. Co.

5. That the records of the Louisiana and Missouri River Railroad Company show the following proceedings had and done by the said company, to wit:

Nov. 31, 1867, *p.* 30.

LOUISIANA, MO., THURSDAY, *Nov.* 31, 1867.

The board of directors of the Louisiana and Missouri River Railroad Company held their regular monthly meeting this day.

Present: The president, Orr, Carstarphus, Buckner, Campbell, McPike, and Lackland. Absent: Messrs. Dyer and Hicks.

63 The following resolution was offered and adopted:

Resolved, That the vice-president of this board, Mr. W. C. Orr, and Mr. N. Lackland, one of the directors, be and are hereby, appointed a committee to proceed at once to confer with the people of the several counties between Mexico, in Audrain county, and Kansas City, in Jackson county, in reference to obtaining aid for extending the Louisiana and Missouri River railroad to the lat[t]er place; and that the committee have power to do whatever they may deem necessary to accomplish this purpose.

LOUISIANA, MO., *December 24th*, 1867.

At a call meeting of the board of directors of the Louisiana and Missouri River Railroad Company, held this day, at the regular place of meeting, there were present the president, Mr. H. V. P. Block, and Messrs. Orr, Campbell, Dyer, Buckner, and Carstarphen.

It was moved and carried that the committee to solicit subscriptions from the counties of Montgomery, Callaway, and Audrain, proceed at once to the performance of their duties, and that the secretary notify the county courts of the time when the committee will visit their respective counties. It was agreed that the committee request, through the secretary, that the county court of Montgomery co. meet on the 13th day of January, 1868; that of Callaway county on the 15th of the same month; and that of Audrain on the 17th of the same month.

JANUARY 30th, '68.

The committee on subscriptions made a verbal report, and asked time to present a written report, which was granted. The report of W. C. Orr and Judge N. Lackland, the committee to visit the counties west of Pike and Audrain, for the purpose of enlisting
them in the work of extending the Louisiana and Missouri
64 River railroad to Kansas City, presented a written report,
which was received and ordered to be filed. Judge Lackland, who had been appointed at the last meeting of the board to look after the interests of the road in securing the extension, made a very favorable verbal report. He concluded by offering a resolution fixing Kansas City as the terminus of the road. Pending the consideration of this resolution, the board adjourned till 8 o'clock, Friday morning, the 31st inst.

FRIDAY MORNING, *January* 31*st*, 1868.

Resolved, That the location of the route of the road be postponed until the objects contemplated in the foregoing resolutions shall have been attained.

After a discussion of these resolutions, Mr. Lackland withdrew his, for which they were offered as a substitute.

Mr. Orr offered the following resolution, which was unanimously adopted, viz:

Resolved, That Judge N. Lackland, of this board, is hereby continued as the representative of this company, to look after its interests in the counties of Boone, Howard, Saline, Lafayette, and Jackson; and that Judge Lackland is hereby instructed to present the books of the company to the several county courts and individuals in the above-named counties, and receive such subscriptions as they be willing to give.

LOUISIANA, MO., *May* 2*d*, 1868.

The board met pursuant to call of the president. Present: Messrs. H. V. P. Block, W. C. Orr, R. A. Campbell, James E. Carstarphen, S. W. Buckner, J. N. Hicks, and N. Lackland. Absent, D. P. Dyer.

Judge Lackland offered the following resolution:

Resolved, By the board of directors of the Louisiana and Missouri River Railroad Company, that the Missouri River railroad be, and is hereby, located from the city of Louisiana to the city of Mexico,
on the route surveyed F. C. Arnes, while chief engineer of
65 the company, and thence through the counties of Audrain,
Boone, Howard, Saline, Lafayette, and Jackson, to the city
of Kansas, on a line most direct, suitable and advantageous as regards distance, grade, cost of construction, and permanent value of same when completed.

This resolution produced a wide discussion, which was participated in by several members of the board and the commissioners from

Audrain, Callaway, and Lafayette. Pending the discussion of this resolution the board adjourned till Monday morning, the 4th inst., at eight o'clock.

MONDAY MORNING, *May 4th*, 1868.

Board met pursuant to adjournment, all the members of the board present. Judge Lackland withdrew the resolution offered on Saturday.

TUESDAY, *May 5th*, 1868.

Motions and resolutions being in order, Mr. R. A. Campbell offered the following resolution:

Resolved, By the board of directors of the Louisiana and Missouri River Railroad Company, that we hereby accept the provisions of an act entitled an act to amend an act entitled an act to incorporate the Louisiana and Missouri River Railroad Company, approved March 24th, 1868; and that the president and secretary of this company are hereby requested to file this acceptance of the provisions of said act in the office of the Secretary of State within ninety days of the passage of said act, certified by the president and secretary, and attested with the seal of said company in accordance with the provisions of said act.

2d. That the main line of said road be and the same is hereby located as follows: Beginning at the most eligible point in the corporate limits of the city of Louisiana, in Pike county, Mo.; thence up the valley of the Noix Creek, crossing the summit at or near
the town of Bowling Green, in said county; thence as near
66 as practicable or advisable on the line of survey as reported
by F. C. Arnes, to the intersection of the North Missouri railroad within the corporate limits of the city of Mexico, in Audrain county; thence in the best and most practicable route through the counties of Howard, Saline, Lafayette, and Jackson, to Kansas City, in the county of Jackson, in the State of Missouri.

3d. That the south branch of the Louisiana and Missouri River railroad be and the same is hereby located as follows: Beginning at a point on the main line not farther east than the town of Bowling Green, and thence along the best and most practicable route to the city of Fulton, in the county of Callaway; thence to some point on the Missouri river, the most eligible and practicable.

4th. That each county through which the road passes, together with its citizens, is expected to furnish an amount of stock sufficient to grade, bridge, and tie the road through its limits.

5th. That a survey is hereby ordered along the line west of the city of Mexico as soon as the county courts of the several counties or citizens or corporate cities along said line to the city of Kansas will indicate to the president their willingness to defray the expenses incident to such survey, and that the amount so subscribed and paid shall be credited on the capital stock subscribed by such counties, individuals, or cities.

The resolutions being seconded, the previous question was called.

The ayes and nays being demanded, the resolutions were adopted by the following vote: Ayes—Campbell, Carstarphen, Buckner, Dyer, Hicks, Hunter, Jenkins, Lackland, McPike, Orr, Windom, Mr. President—12. Noes—none. Absent—Mr. Shackleford.

LOUISIANA, MO., *Saturday, November 7th,* 1868.

Pursuant to adjournment the board met at 8 a. m. Present—Messrs. Block, Orr, Campbell, Lackland, McPike, Buckner, Carstarphen, and Dyer.

Mr. Lackland presented the following resolution:

67 Resolved 1st. The Louisiana and Missouri River Railroad Company hereby accepts the propositionof the countyof Howard, offering to subscribe four hundred thousand dollars to the capital stock of the Louisiana and Missouri River Railroad Company on certain conditions set forth in an order of the county court of Howard county, made November 4th, 1868, a copy of said order now being on file in this office.

Resolved 2d. The president of this company is hereby instructed to put a surveying party on the route from Mexico to Glasgow, and complete the survey as soon as possible.

Resolved 3d The president is hereby instructed to advertise for bids for the construction of that part of the route from Mexico to Glasgow, as soon as the surveys in his judgment are far enough advanced to justify it.

Resolved 4th. This company is prepared to furnish satisfactory evidence to the county court of Howard county that we will be able to furnish the iron and rolling stock for the road when needed.

Resolved 5th. The secretary is hereby instructed to furnish the clerk of Howard county with a certified copy of these resolutions.

Mr. Campbell moved the adoption of the resolutions. Seconded by Mr. Orr. Adopted.

LOUISIANA, MO., THURSDAY, *August the 29th,* 1867.

At a regular meeting of the board of directors of the Louisiana and Missouri River Railroad Company held this day at the regular place of meeting, there were present the president, Mr. H. V. P. Block, W. C. Orr, S. W. Buckner, James E. Carstarphen, and N. Lackland. Absent: James N. Hicks, Aaron McPike, R. A. Campbell, and D. P. Dyer.

The minutes of last meeting were read by the secretary, approved by the board, and signed by the president.

Reports of committees being in order, the president who had by resolution at the previous meeting been authorized to procure and employ a corps of engineers to make a survey of the
68 several routes which he might indicate for the location of the road, reported verbally that he had obtained a competent engineer, Col. F. C. Arnes, who came well recommended, and that he had agreed to pay him $250.00 per month and board while in

the field. The report was received and ordered to be spread on the minutes.

Mr. Carstarphen, from the committee appointed to confer with the Pike county court to devise ways and means for procuring the money to pay the call of 1 per cent. of the county subscriptions to the capital stock of the company, reported verbally that arrangements had been made to procure the same, and that it would be paid. The committee were discharged.

A motion was made and carried that in future all reports of committees should be submitted to the board in writing.

It was moved and carried that the president appoint a committee of six persons (not confined to the board) including himself, to confer with the county court of Pike county, Illinois, in reference to having a survey made for a route for a railroad betweeen the city of of Louisiana, Missouri, and Naples, Illinois.

The president, H. V. P. Block, Dr. S. W. Buckner, Hon. T. J. C. Fagg, A. J. Reid, J. E. Carstarphen, and E. Draper were appointed to constitute said committee.

Thomas B. Harris, commissioner for Callaway county, being present, presented a certified copy of an order of the county court of Callaway county, authorizing him to contract for surveys by this board through that county for a suitable location of said road to Jefferson city via. Fulton. The order was received and ordered to be placed on file by the secretary.

Mr. Orr offered the following resolution, which after a good deal of discussion was unanimously adopted:

" *Resolved* by the board of directors of the Louisiana and Missouri River Railroad Company that the president of this
69 board be, and he is hereby, authorized and empowered to
cause the survey of such lines for a railroad south of the North Missouri railroad through the counties of Audrain and Callaway as may be agreed upon by the commissioner of Callaway county, Mr. Thomas B. Harris and himself, provided the expenses of such surveys be paid by the county of Callaway. The expenses of the line adopted shall be credited upon the stock subscribed by said county, if accepted by the board.

Mr. Lackland offered the following, which was also adopted after a good deal of discussion:

" *Resolved*, That the president be, and is hereby instructed to cause a survey of the nearest and best route to be made Mexico, in Audrain county, provided the county of Audrian will pay the expenses of said survey within the county of Audrain, and if the stock subscription of said county is accepted, then the amount of said survey shall be credited on said stock."

The following resolutions were offered by Mr. Orr, and adopted, viz:

" *Resolved*, That the president of this board, H. V. B. Block, N. Lackland and Thos. B. Harris, be appointed a committee to procure the appointment of commissioners to secure the right of way and subscription of stock on all the lines that may be surveyed in their several counties.

"*Resolved*, That a committee of four (of which number the president shall be one) be appointed by the president to receive subscriptions from the counties of Audrain and Callaway to the capital stock of the Louisiana and Missouri River railroad."

Under this last resolution the president, Mr. Block, W. C. Orr, R. A. Campbell and D. P. Dyer, were appointed the committee.

On motion it was ordered by the board that the secretary have printed for the use of the company five hundred blank deeds of relinquishments as per copy furnished.

On motion, which was carried, W. C. Orr, S. W. Buckner and
T. J. C. Fagg, were appointed a committee to procure guides
70 to assist the engineer in inspection of the country been Louisiana and Bowling Green.

On motion, commissioner Harris was requested to file his written acceptance of the terms of the resolution providing for surveys in Callaway county, with which he complied, which is on file, and of which the following is a true copy, viz:

LOUISIANA, Mo , *Aug. 29th*, 1867.

"It is agreed by the undersigned commissioner for Callaway county, with the president and board of directors of the Louisiana and Missouri River railroad, that he accepts the conditions of a resolution this day adopted by the board, and binds Callaway county to the terms indicated in said resolution in reference to the survey of the several lines through Callaway county.

"(Signed,) T. B. HARRIS,
"*Commissioner for Callaway Co.*"

On motion, the board adjourned to meet at time and place of regular meeting.

W. C. ORR, *V. P.*

A. J. REID, *Sec.*

LOUISIANA, Mo., *October 3d*, 1867.

The board of directors of the Louisiana and Missouri River Railroad Company met this day at their regular place of meeting, being the regular day of meeting. Present, W. C. Orr, Jas. E. Carstarphen, J. W. Buckner, J. W. Hicks and Aaron McPike. Absent, the president, H. V. P. Block, Messrs. Dyer, Campbell and Lackland. The vice president, Mr. W. C. Orr, took the chair. The minutes of the last meeting of the board were read by the secretary, approved by the board, and signed by the vice president. Messrs. S. W. Hammock and Watt Caldwell, commissioners from Montgomery county, were present before the board to perfect arrangements for survey of a line for the location of the Louisiana and Missouri River railroad through their county. After hearing their statement, and the reading of the order of their county court asking for the survey which is on file in this office, the following resolution was offered by Dr. J. W. Buckner, and adopted.

71 *Resolved* by the board of directors of the Louisiana and Missouri River Railroad Company, that the president of said ——road company be and he is hereby authorized and empowered to cause the survey for a railroad line from the town of Bowling Green to Wellsville, in the county of Montgomery, by the way of Middleton or any other route, the county court of Montgomery county agree upon with the president; *Provided*, The county of Montgomery will agree to pay the expense incurred by such survey; and provided, further, the amount of such expenditure be entered as a credit upon the capital stock subscribed by said county to said company, if such line be accepted by this board.

On motion the commissioners from Montgomery were requested to file their written acceptance of the terms of the above resolution. The following is their acceptance (a copy) which is on file in this office.

(*Copy.*)

LOUISIANA, Mo., *Oct.* 3*d*, 1867.

It is agreed by the undersigned commissioners from Montgomery county, with the president and board of directors of the Louisiana and Missouri River Railroad Company, that they accept the terms and conditions of a resolution this day adopted by the (said) board, and bind the county of Montgomery to the terms indicated in said resolution in reference to the survey of the several lines through the county of Montgomery.

(Signed) WATLER CALDWELL.
SENECA W. HAMMOCK.

On motion, Walter Caldwell, Seneca W. Hammock, and Benj. Sharp were appointed a committee to solicit subscriptions and take the right of way on the lines surveyed.

On motion, Aaron McPike, Hammock, Caldwell, William K. Biggs, and Dr. S. J. Reynolds were appointed a committee to solicit subscriptions of stock and take the right of way along the route surveyed west of Bowling Green to the county line.

72 The following accounts were audited by the committee on accounts and ordered to be paid, viz.:

Voucher No. 1.—Services of Col. F. C. Arnes, chief engineer, 1¼ month, from Aug. 24th, 1867, to Sept. 30th, 1867, @ $250.00 per month	$312 50
Voucher No. 2.—Pay-roll of engineer corps	667 50
" " 3.—Acct. of W. C. Orr, out for survey party, supplies while in the field and services of *of*	443 57
Total amount	$1,423 57

Paid by treasurer.

HENRY V. P. BLOCK, *Pres't.*

A. J. REED, *Sec.*

LOUISIANA, MO., *January 30th*, 1868.

The board of directors of the Louisiana and Missouri River Railroad Company held their regular meeting this day in the city hall in this city, President Block in the chair. All the directors were present. The proceedings of the two last meetings of the board were read by the secretary and approved.

Mr. Campbell moved to dispense with the regular order of business, which was carried.

On motion, the question of locating the road was taken up. An invitation was then given to the gentlemen present from Montgomery, Callaway, and Audrain counties, interested in the various routes surveyed, to present to the board the claims of the several routes. Messrs. Music, of Montgomery, Hockaday and Harris, of Callaway, and Hunter, of Audrain, severally addressed the board in the interest of the several lines. During the discussion Mr. Harris, of Callaway, filed a proposition to make an additional subscription for the county of Callaway.

A paper containing conditional subscriptions by the citizens of Ashley and the southwestern portions of Pike county, was presented by Mr. P. B. Bell and filed. The discussion before the board having been concluded, it was moved and carried that the hall
73 be cleared that the board might proceed to the consideration
of the question of location and other matters of business. Messrs. Block and Dyer, committee to visit the east to confer with railroad officials, presented a written report which was accepted and ordered to be filed. The following resolution as recommended in said report was offered by Mr. Campbell and adopted, viz.:

"*Resolved*, That the thanks of this board are due and are hereby tendered to the Hon. J. B. Henderson and Col. F. C. Aarnes for the valuable and disinterested assistance rendered the committee of this board on their recent trip east in furthering the object of their visit.

The report of the committe appointed to secure the right of way in this, Pike county, was presented, received, and ordered to be filed together with a number of relinquishments. An account in favor of J. G. Rodgers, notary public for service in taking relinquishments amounting to $36 and $\frac{80}{100}$ dollars was presented and referred to the committee on accounts, who reported that the sum of $31 and $\frac{80}{100}$ dollars be allowed, the report was adopted and that sum allowed and ordered to be paid by the treasurer. The committee on subscription made a verbal report and asked time to present a written report, which was granted. The report of W. C. Orr and Judge N. Lackland, the committee to visit the counties west of Pike and Audrain for the purpose of enlisting them in the work of extending the Louisiana and Missouri River railroad to Kansas city, presented a written report which was received and ordered to be filed. Judge Lackland who had been appointed at the last meeting of the board to look after the interests of the road in securing its extension made a very favorable report. He concluded by offering a resolution fixing Kansas city as the terminus of the road.

Pending the consideration of this resolution the board adjourned till 8 o'clock Friday morning the 31st, inst.

FRIDAY MORNING, *January* 31, 1868.

74 The board met pursuant to adjournment in the law-office of Hon. D. P. Dyer. Members of the board all present. Mr. Campbell offered the following resolution as a substitute of the resolution of Mr. Lackland offered yesterday evening, and now before the board, viz:

"*Resolved*, That a committe of five be appointed by the president of this board to prepare a bill for the amendment of the charter of this company to be presented to the legislature at its present session, said bill to embrace the following amendments:

1st. An increase of the capital stock of the company to a sum not less than ($10,000,000) ten million dollars.

2d. The right of the company to construct a branch or branches from the main line to such point or points as the wants of the people or the interests of the company may require.

3d. To so construe the 35 section of the charter as to authorize the board of directors to designate any point on the Missouri river on the north, or south side of said river, and within the limits of the State of Missouri, as the terminus of the road.

Resolved, That a committee of three be appointed by the president to procure additional subscriptions to the capital stock of the company, and make such changes in subscriptions already made, so as to make them available to an amount sufficient to insure the construction of the road bed from the point in Pike county at which our present subscription will be exhausted, to the point in Audrain or Montgomery counties for which means are not provided for the construction of the road bed complete.

Resolved, That the location of the route of the road be postponed until the objects contemplated in the foregoing resolutions shall have been attained."

After a discussion of these resolutions, Mr. Lackland withdrew his, for which these were offered for a substitute, and the resolutions were unanimously adopted by the board. And under the 75 1st resolution to propose amendments the president appointed Dyer, Orr, and Buckner from the board and Hon. T. J. C. Fagg. Under the second resolution providing for a committee of three to procure additional subscriptions, the president appointed Messrs. Campbell, Orr, and McPike. On motion, the president was added to the committee.

The committee on subscriptions who visited Montgomery, Callaway, and Audrain counties presented their written report, which was read, received, and ordered to be filed, and the committee discharged. Mr. W. Lackland presented an account for expenses incurred in visting the counties west in the interest of the road amounting to

($189.35) one hundred and eighty nine dollars and thirty-five cents, which was allowed and ordered paid.

Mr. Orr offered the following resolution which was unanimously adopted, viz:

Resolved, That Judge N. Lackland of this board is hereby continued as the representative of this company to look after its interests in the counties of Brown, Howard, Saline, Lafayette, and Jackson, and that Judge Lackland is hereby instructed to present the books of the company to the several county courts and individuals in the above-named counties, and receive such subscriptions as they be willing to give. On motion the president was authorized to correspond with Col. F. C. Arnes on the subject of retaining his services as permanent engineer of the road, and ascertain upon what terms his services can be secured.

The report of Chief Engineer F. C Arnes was presented to the board and accepted. Bill for printing same of $25.00 was allowed.

The account of H. V. P. Block and D. P. Dyer for expenses incurred in their trip east under a resolution in this board were allowed as follows: H. V. P. Block, $293.70, D. P. Dyer, $148.00, making the total sum of $441.70.

The following resolution was offered by S. W. Buckner and adopted:

Resolved, That —— ——— be, and he is hereby, appointed
76 to visit in person the sections of country lying directly between this point and the town of Pana, in the State of Illinois, and canvass the subject of the extension of a railroad from the city of Louisiana to said town of Pana, and adopt whatever measures he may deem necessary to enlist a public interest in behalf of such extention of the said contemplated line of road, and he is hereby authorized and empowered to visit the town of Pittsfield, Illinois, and confer with the citizens thereof in reference to the building of the Naples and Louisiana Railroad from Pittsfield to this city. The blank in the resolution on motion was to be filled by the president, who asked time to find some suitable person who would accept the appointment.

On motion the board adjourned till the next regular day of meeting, being Thursday, the 27th day of February. The president afterwards filled the blank in the above resolution with the name of T. J. C. Fagg. O. J. Reid, Sec. Henry V. P. Block, Pres't.

6th. That the county court of Howard county subscribe $400,000 to the capital stock of Louisiana and Missouri River Railroad Company, but no certificate of stock was ever issued or demanded. That the stock of Howard county, 3,580 shares, was voted by duly appointed agents at various elections of directors. That taxes were levied, moneys collected, and interest paid up to March, 1878.

7th. That no work was done on the road prior to March 24th, 1868, that the road was never constructed or operated.

8th. That plaintiff is the holder for value of the instruments sued on.

9th. That the county court of Callaway county made the following orders. Objected to by pl'ff.

Order of Callaway Co., Jan'y 16th, 1868.

STATE OF MISSOURI,
County of Callaway, } *ss:*

In the county court, in and for said county, on the 16th day of January, 1868, the following order was made, to wit:

"It is ordered by the court that Thomas B. Harris be, and he is
hereby, appointed commissioner and agent of the county of
77 Callaway to take stock in and subscribe to the capital stock
of the Louisiana and Missouri River Railroad Company, the
sum of five hundred thousand dollars, being five thousand shares of one hundred dollars each of said capital stock, said subscription to be paid by the issue of county bonds, which said bonds as hereby ordered shall issue in such sums and payable at such dates as the court may direct to run, not exceeding fifteen years from the issue thereof, bearing not less than nine per cent. interest per annum, payable semi-annually said sum so subscribed, and to be issued to said company in Calloway county bonds as aforesaid, as may be required by said railroad company during the progress of the construction of said railroad from some point west or southwest of the North Missouri Railroad, on e[i]ther the Wellsville or Jeff Town routes as surveyed through said county, through the city of Fulton, and by way of Bloomfield—as near as practicable to the Missouri river.

And it is further understood, that the county of Callaway will guarantee the right of way on either of said routes aforesaid, through said county to said railroad company. And it is further declared, that the conditions upon which this subscription is based are that the funds shall be used exclusively in the building and construction of that part of the road lying west or southwest of the North Missouri Railroad on either of the routes aforesaid, as the same may be adopted and located, and as said work progresses, said appropriation shall be met by the issue of bonds as the construction and building of that part of said road as may be shown by the reports of said company to this court from time to time may demand, and also said railroad company shall make, keep, and maintain a depot at the city of Fulton, on the east side of Town creek, within the corporate limits of the city of Fulton.

I, James Rickenbaugh, clerk of the county court in and for
78 said county, do hereby certify that the above and foregoing is a
true and correct copy of said order as fully as the same ap-
pears of record in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of said court.

Done at office in Fulton, in said county of Callaway, on this 26th day of January, A. D. 1881.

[SEAL.] JAMES RICKENBAUGH, *C'k.*

10th. That the railroad was built from a point on the Missouri river opposite Jefferson City, through the town of Mexico, in Audrain county, through Bowling Green, in Pike county, to [the] city of Louisiana, in Pike county, and is now operated.

The court finds, as a conclusion of law, that the foregoing facts constitute no defence to plaintiff's cause of action, and that the plaintiff is entitled to judgment for the amount of coupons filed, and interest, which is ordered accordingly, to which findings and conclusion of law defendant excepts.

(Signed) ARNOLD KREKEL, *Judge.*

And afterwards, at a regular stated term of the circuit court of the United States, in and for said district and division, begun and held on the third Monday of November, A. D. 1880, at the place aforesaid, the following further proceedings were had in said case, on the 20th day of November, 1880, to wit:

Bond Filed. Supersedeas Granted.

GAIUS PADDOCK
vs. } 1312.
HOWARD COUNTY.

This day there is presented to the court a writ of error to reverse the judgment in the above cause, a citation directed to the plaintiff, and a supersedeas bond in the sum of nine thousand dollars ($9,000). Whereupon it is ordered, that said writ of error be allowed, said citation signed and bond approved, and that a supersedeas be granted staying all further proceedings upon the judgment, until the
79 decision of said cause in the Supreme Court of the United States. It is further ordered, that said supersedeas bond be made part of the record herein.

And said supersedeas bond so filed, as aforesaid, is in the words and figures following, to wit:

Supersedeas Bond.

Know all men by these presents, that we, the county of Howard, of the State of Missouri, as principal, and Thomas J. Payne and Robert P. Williams, as sureties, are held and firmly bound unto Gaius Paddock in the full and just sum of nine thousand dollars to be paid to the said Gaius Paddock, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this nineteenth day of October, in the year of our Lord one thousand eight hundred and eighty.

Whereas, lately at the April term, A. D. 1880, of the circuit court ol the United States for the western district of Missouri, eastern division, in a suit depending in said court between Gaius Paddock, plaintiff, and the county of Howard, in the State of Missouri, defendant, judgment was rendered against the said county of Howard, and the said county of Howard, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Gaius Paddock, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., on the second Monday of October next.

Now, the conditions of the above obligation is such that if the said county of Howard shall prosecute said writ to effect and answer all damages and costs, if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

COUNTY OF HOWARD, MISSOURI.
By N. B. COOPER, *Agent of Co.* [SEAL.]
THOS. J. PAYNE. [SEAL.]
R. P. WILLIAMS. [SEAL.]

80 Sealed and delivered in presence of—
SID. B. CUNNINGHAM.

Approved by—
A. KREKEL, *Judge.*

UNITED STATES OF AMERICA,
Howard County, Missouri, } *sct.* :

Before me, Sid. B. Cunningham, clerk of the county court of Howard county, Missouri, personally appeared Thomas J. Payne, to me well known, who, upon oath, states that he is worth, over and above his indebtedness, the sum of five thousand dollars, and that he owns real property to that amount, subject to execution, in Howard county, Missouri.

THOS. J. PAYNE.

Subscribed and sworn to before me, this 19th day of October, 1880.

[SEAL.] SID. B. CUNNINGHAM,
Clerk County Court.

81 UNITED STATES OF AMERICA,
Howard County, Missouri, } *sct.* :

Before me, Sid. B. Cunningham, clerk county court Howard county, Missouri, personally appeared Robert P. Williams, to me well known, who, upon oath, states that he is worth, over and above his indebtedness, the sum of five thousand dollars, and that he owns real property to that amount, subject to execution, in Howard county, Missouri.

ROBT. P. WILLIAMS.

Subscribed and sworn to before me, this 19th day of October, 1880.

[SEAL.] SID. B. CUNNINGHAM,
Clerk County Court.

UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, } *sct.:*

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true transcript of the record and proceedings in case No. 1312 of Gaius Paddock against Howard county, as fully as the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of Jefferson, in said district, this ninth day of February, A. D. 1881.

H. C. GEISBERG, *Clerk.*

Endorsed on cover: W. Missouri C. C. U. S. No. 224. The County of Howard, plaintiff in error, *vs.* Gaius Paddock. Filed 16th February, 1881.

110-384

IN THE

SUPREME COURT

OF THE UNITED STATES.

October Term, 1883.

NO. 224.

THE COUNTY OF HOWARD,

Plaintiff in Error.

vs.

GAIUS PADDOCK,

Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND ARGUMENT OF CASE.

JOHN D STEVENSON,

for Plaintiff in Error.

ST. LOUIS:
CHANCY R. BARNS, PRINTER,
707 OLIVE STREET.
1883.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1888.

NO. 224.

THE COUNTY OF HOWARD.
Plaintiff in Error.

vs.

GAIUS PADDOCK,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT OF CASE.

The defendant in Error (Plaintiff below) sued Howard County, (Plaintiff in Error) in the Circuit Court of the United States for the Western District of Misouri, upon Coupons, detached from Bonds, purporting to be issued by Howard County. The bonds exhibited in petition recite, on their face, that they are issued for value, are payable to the Louisiana and Missouri River Rail Road Com-

4th. That the Bonds and Coupons offered by the Plaintiff were in form as follows (Printed record, pp. 43 and 44:)

5th. That the records of the Louisiana and Missouri River Railroad Co. show the following proceedings had and done by the said company, to wit: (See printed record p. 44) and following:

6th. That the County Court of Howard County did subscribe $400,000 to the Capital Stock of the Louisiana and Missouri River Railroad Company, but *no certificate of stock was ever issued or demanded.* That the stock of Howard Co., 3,580 shares, was voted by duly appointed agents at various elections of directors. That taxes were levied, moneys collected and interest paid up to March, 1878.

7th. That no work was done on the road prior to March 24th, 1868. That the road was never constructed or operated.

8th. That plaintiff is the holder for value of the instruments sued on.

9th. That the County Court Callaway County made teh following orders:

Order of CALLAWAY COUNTY COURT, July 10th 1868.
(See printed record, page 54.)

10th. That the railroad was built from a point on the Missouri River opposite Jefferson City, through the town of Mexico, in Audrain County, through Bowling Green, in Pike County, to the city of Louisania in Pike County, and is now operated.

Upon this finding of facts—the Court (below) finds as a conclusion of law that the forgoing facts constitute no defense to plaintiff's cause of action and that the plaintiff is entitled to judgment, for the amount of coupons filed and interest, which judgment was accordingly entered, and defendant below excepted.

Plaintiff in error brings the case to the court by writ of error.

ASSIGNMENT OF ERRORS.

Plaintiff in error for causes of error assigns the following;

The court below erred in its conclusion of law.

The law of the case is with the plaintiff in error (defendant below) and the court below should have so declared.

The judgment below is against the facts and law of the case.

The judgment below should have been for the defendant.

JOHN D. STEVENSON,
for Plaintiff in Error.

Sec. 14.—Art. IX Constitution of 1685.

Sec. 14. The General Assembly shall not authorize any county, city, or town to become a stockholder in, or to loan its credit to, any company, association, or cosporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto.

Copy of Bond and Coupon.

"United States of America. No.———. Ten years. $1.000. Howard County Bond. Interest eight per cent. per annum, payable on the first days of March and September.

Know all men by these presents: That the county of Howard, in the State of Missouri, acknowledges itself indebted and firmly bound to the Louisiana and Missouri River Railroad Company in the sum of one thousand dollars, (in current funds,) which sum the said county hereby promises to pay to the Louisiana and Missouri River Railroad Company, or bearer, at the National Bank of Commerce, in New York, ten years after date of this date of this bond, together with interest thereon from date, at the rate of eight per cent. per annum, with interest shall be payable semi-annually, in current funds, on the presentation and surrender at said bank of the annexed coupons, as they severally become due and payable.

This bond is issued in pursuance of the orders of the County Court of Howard County, made respectively on the 23d day of December, 1869, and 15th day of July, 1870, which orders were made in accordance with an Act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Louisiana and Missouri River Railroad Company," approved March, 10 1859.

In testimony whereof, the said County of Howard has executed tis bond by the preseding justice of the County Court of Howard county, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same, and affixing there to the seal of said court.

Done at the city of Fayette, county of Howard aforesaid, this first day of September, 1870.

[Seal of Howard County Court, Missouri.]

WM. R. HEATH,
Presiding Justice of the County Court of
Howard County, State of Missouri.

Attest:
A. J. HERNDON,
Clerk of the County Court of Howard County, Missouri.

ARGUMENT.

The General Assembly of the State of Missouri by Act of March 10th, 1859, incorporated the Louisiana and Missouri River Railroad Company—with authority to construct a railroad from the City of Louisiana, in Pike County, by Bowling Green, to a point on the North Missouri Railroad, between the southern limits of Wellsburg and the northern limits of Mexico, thence to the Missouri River; and authorized counties in which any part of the route of said road may be to subscribe. Said act required the construction of the road to be commenced within ten years. This charter laid dormant until the years 1866 and 1867, when the company organized. In the meantime the Constitution of the State known as the Constitution of 1865 was framed and adopted. Prior to the adoption of this Constitution, counties could subscribe and become stockholders in railroad companies, through their County Courts, without a popular vote. Sec.14th, Article XI Con,-stitution of 1865, prohibited absolutely the General Assembly from authorizing any county * * to become a stockholder in any association or corporation, unless two-thirds of the qualified voters of such county * * at a regular special election to be held therein shall assent thereto. The Louisiana and Missouri River Railroad Company organized under the Act of March 10th, 1859, and afterwards applied to the Legislature for an amendment to this charter, which was done, and is known as the Act of March 24th, 1868. From the date of the organization, up to the passage of the amended Act of March 24th, 1868, the Company surveyed lines through Pike, Montgomery, Audrain and Callaway counties, accepted subscriptions in all these counties, and commenced the work of construction. No survey was made in Howard county with a view to *route* or *location*. This was all done under the Act of March 10th, 1859. The road authorizeed to be built was a short line—from the Mississippi river to the Missouri river. The Legislature in the passage of the Act of March 10th, 1859, authorized this road and none others to be built, (no branches were provided for), limiting the capital to three millions of dollars—the requisite amount—and the Company organized and commenced the construction of this short line of road, which did not touch Howard county, and finally did complete this road and now operate it. Had they been content with the purposes of the Act of March 10th, 1859, this case would never have been here. Unfortunately for the tax-payers of Howard county, the directory were no sooner installed, and began the work they were authorized to do, than, as is too frequently the case, their ideas expanded, and they determined not to be restricted in either the number of miles of railroad they would build or the number of roads. They procured the passage of the Act of March 24th, 1868. Under the Act of March 10th, 1859, County Courts on the route of the road, as authorized to be built by that Act, could subscribe to the capital stock of the Company.

In the year 1865 the new Constitution was adopted. The wild schemes inaugurated, and the loud complaints of the tax-payers, caused to be inserted in that instrument, Section 14, Article XI. What the people proposed to accomplish by this clause of the Constitution, is apparent: 1st. To restain the Legislature. 2nd. To require the assent of the tax-payers, for all such debts, as a precedent condition to their creation. Every description of legislation, no matter under what form or guise, whether original legislation or amendments to existing laws, imposing additional burdens upon the tax-payers was forbidden, unless accompanied by the required assent of two-thirds of the qualified voters at a general or special election.

The Act of March 24th, 1868, was applied for by the Directors of the Louisiana and Missouri River Railroad Company to carry out their enlarged scheme. This Act, styled an Amendment, increased the capital stock from three to ten millions of dollars, an increase of seven millions, more than double the amount of original capital. It entirely changed the provission of the original Act, as to the road to be built, providing for a main line of more than twice the mileage of the original line, and retaining the original road under the name of a branch. The provisions for subscription by counties are entirely different. So far as this Act could do so, it wiped out of existence the original Act of March 10th, 1859. After its passage every thing done by the corporation was done under its provisions; it was the sole authority to build any road.

Under the Act of March 10, 1859, a road could be built to St. Aubert, Jefferson City, to Boonville, or intermediate points on the Missouri river, commencing at Louisiana and touching Bowling Green, crossing the North Missouri Railroad betweens the northern limits of Mexico and the southern limits of Wellsburg; but after the Amendment no such road could be built, only a branch from the main road,—not the road authorized by Act of March, 1859, but by Act of March 24, 1868. On the 23d day of December, 1868, the pretended subscription of Howard county was made to the Louisiana and Missouri River Railroad Company, to build the road; the corpoation was at that time authorized to build, and was trying to build, not by authority of the Act of March 10, 1859, but by authority of Act of March 24, 1868. The company, in accepting the act of March 24, 1868, voluntaryily surrendered the road authorized by the Act of March 10, 1859.

To hold this pretended subscription is authorized by Act of March 10, 1859, as recited in the bond, is to assert that the Acts of March 10th and March 24 were both in full force and effect, and that the corporation had full power to build three roads:

1st. The road form Louisiana by Bowling Green, crossing the North Missouri Railroad between the northern limits of Mexico and southern limits of Wellsburg.

2d. Road from Louisiana by Bowling Green to a point on either north or south side of the Missouri river.

3d. South branch from a point not east of Bowling Green to a point on the Missouri River between St. Aubert and Boonville.

This is utterly absurd. The Act of March 24th, 1868, effectually disposed of the road authorized under the Act of March 10, 1859, and all powers of counties to subscribe under it after the acceptance by the railroad company. From the filing of the acceptance in the office of the Secretary of State, the corporation could only build the road and branch authorized by the amended act, and subscriptions could alone be made under that act, and not under the Act of March 10, 1859. The pretended subscription of Howard county must be upheld by Act of March 24th, 1868.

The recital on the face of the bondy thot the authority for its issue was the Act of March 10, 1859, cannot change the facts of which the plaintiff was bound to take notice; that the Act of March 24th, 1868, was in existence, and had been accepted by the Louisiana and Missouri River Railroad Company; that the pretended subscription was made on December 23, 1868. Even though it may be a true legal proposition, that there was a period of time during which, under the Act of March 10, 1859, Howard county could have subscribed to the Louisiana and Missouri River Railroad Company, and issued bonds to build the road authorized by the Act of March 10, 1859, without a vote, *yet no subscription was made, or pretended to be made.* It is impossible this pretended subscription can be upheld by the authority of the Act of March 10, 1859, when at the date of the subscription the road authorized to be made, was, by the Legislature of Missouri, and assent of the Louisiana and Missouri River Railroad Company, obliterated, and wholly different lines of road authorized to be built, and different conditions of subscription provided.

To assert that the subscription of Howard county, made on the 23d of December, 1868, was authorized by the Act of March 10th, 1859 presents this strange condition of things. The Act of March 10th, 1859, authorized the construction of a road from the date of its approval to the 24th day of March 1868, the date of approval of amended Act from the City of Louisiana in the County of Pike, by way of Bowling Green, to some suitable point on the North Missouri Railroad between the towns of Wellsburg and Mexico, in Audrain county, to the Missouri river, at the most eligible point. This road might have been built through Howard county, according to the terms of subscription, but on the 24th day of March, 1868, the Legislature limited the same road—calling it a branch—to a point on the Missouri river between St. Aubert and Boonville, thus cutting off the probability of building the road designed by the Howard county subscription. Thus after March 24th, 1868, the road authorized by the Act of March 10th, 1859, was by the Legislature of the State, inhibited by law to be built through Howard county. How is it possible to justify the subscription of December 23, 1868, by a recital in the face of the bond, of the Act of March 10th, 1859, as authority for a subscription by Howard county, when the Legislature had absolutely changed the Act of March 10th, 1859, so as to prevent compliance with the terms of the subscription of Howard County Court under that Act.

This brings us at once to the essence of the defence, that the Act of March 24, 1868, is that class of legislation which Section 14, Article XI., of the Constitution of 1865 was intended to affect. That the Constitution of 1865 does not affect legislation prior to its adoption is well-settled. The converse of the proposition is equally true, that it does impress itself upon subsequent legislation.

Section 14, Article XI, prohibits county debts on account of corporations in future without assent of the voters. Why was the Act of March 24, 1868, applied for and accepted by the Louisiana and Missouri River Railroad Company? The answer is plain. The Act of March 10, 1859, gave the company too small a capital, and confined the road to a route they did not want. The Act of March 24, 1868, was responsive to their demand, increased their capital to ten millions, authorized the construction of a road across the State, and allowed a branch road. It, in fact, was a new grant of powers. These changes were so radical, that all that was left of the Act of March 10, 1856, were the provisions common to all railroad corporations, of detail of administration. Had the framers of the Act of March 24, 1868, contented themselves with the powers authorizing the construction of the main line and branch road with their capital of ten millions, to be obtained from other sources than county subscriptions, the constitution would not have affected such additional powers. Such legislation could well be applied to the charters of companies granted prior to July 4, 1865; but the incorporation of section 20, authorizing counties to subscribe, etc., without providing for the assent of two-thirds of the qualified voters, subject the exercise of the power granted to the requirements of Section 14, Article XI.

Under the provisions of this new legislation, for the construction of this road, authorized by the Act of March 24, 1868, and not authorized by the Act of March 10, 1859, and which could not have been built under the Act of March 10, 1859, the Howard County Court undertook, by a subscription made on the 23d of December, 1868, to load down the people of the county with a debt of $400,000, without their assent. This the Constitution of the State prohibited, and no recital on the face of the bond can evade this requirement.

We now turn to the law of the case.

1. The want of power is a complete defense.

Marsh v. Fulton Co., 10 Wall., 676.
St. Joseph Township v. Rogers, 16 Wall., 644.
Sherrard v. Lafayette Co., 3d Dilton, C. C. R., 236.
Township of East Oakland v. Skinner, 4 Otto, 255.
Gause v. City of Clarksville, 8 *Central Law Journal*, 358.

2. 14th section XI Article of Constitution of 1865 is prospective.

State v. Macon County, 41 Mo., 453.
State v. Sullivan County, 51 Mo., 531.
Smith v. Clark County, 54 Mo., 58.
County of Scotland vs. Thomas, 4th Otto, 688.

Now at the date of the adoption of the constitution the legislature was absolutely prohibited from all legislation, imposing this class of debts upon counties without providing for the assent of two-thirds of the voters at a general or special election.

This section of the constitution applies to all subsequent Legislation, whether *original acts* or amendments to existing laws. The Fiat of the People—planted in the organic law—is after 1865. ***No debt shall be imposed up on the tax-payer without his assent.***

In State v. Marion County *supra*, Judge Wagner said: "The next question to be considered, does the clause in the Constitution referred to (Section 14, Article XI) apply to past as well as future acts? Was it intended to place an absolute inhibition on all subscription to stock in railroad companies, * * * or does it merely prescribe a limitation on the future power of the legislature. * * * The clause in the Constitution,—the conditions on which counties and corporate authorities shall be allowed to subscribe for stock in railroad companies,—seems to have been transcribed form the Constitution of the State of Ohio. It has long been a recognized rule, that when we import a law from another State into our own law, we also adopt the construction placed upon it by the State whence the law was derived. This very question has been before the Supreme Court of Ohio on several occasions, and has received a uniform construction. In the first place where the question came up (Cass v. Dillon, 2 Ohio, 606), the court was not unanimous. * * * But the majority of the court held, that there was no such repugnance between a law enacted before the adoption of the Constitution, authorizing a subscription by a county to the capital stock of a railroad company, and the provision of the Constitution referred to; that the section plainly referred to *future* legislation alone, and the acts it prohibited were not subscriptions under prior or existing laws, *but the making of any more such laws.* The same question was before that tribunal in the case of The State *ex rel*, Smead v. The Trustees of Union Township, 8 Ohio, 394, and the whole court concurred in declaring, 'This provision, it will be observed, does not inhibit such subscription or issuing of bonds by virtue of *existing* laws; but only prohibits the General Assembly *from passing such laws in the future after the adoption of the constitution.'* * * * Upon the whole, we conculde that the 14th Section of the XI Article of the Constitution is a limitation upon the *future* power of the legislature, and was not intended to retroact."

In the case of State v. Saline County Court (51 Mo., 350), special Judge Shepley says, p. 371, "This court, in the case of State *ex rel*, The Missouri & Mississippi Railroad vs. Macon County, 41 Mo., 453, where the charter of the Railroad passed before the adoption of the new Constitution, gave power to counties on the line of this road to subscribe, without limitation, held that the fourteenth Section of the eleventh Article of the Constitution, was a limitation on the *future* power of the legislature, and was not intended to re-troact so as to have any controlling application to laws in existence when the Constitution was adopted." In the same, Judge Bliss, in his separate opinion, says, on page 385, "It is settled, that when a right to subscribe for stock to a railroad company has been granted to a county before the adoption of the Constitution, that right is not recalled, but continues to exist, without regard to its restrictions. (State v. Macon County Court, 41 Mo., 453.) But in the present case, the County Court of Saline county, until the Act of 1868, had no right to make any subscription of this kind. *That amendment granted a power which did not before exist, and the grant is necessarily subjected to all the conditions then imposed by law. It was a new grant, and it does not matter whether it gave a right to build a new branch of an old road, or an extension of the same, or one altogether new.*

The restriction is upon the legislative power, and the character of the road cuts no figure.

In the case at bar, under the Act of March 10th, 1865, up to the 24th day of March, 1868, it may be admitted for the sake of argument, the action of the County Court of Howard county, if such action had taken place, would have found authority in that Act, but, in fact, nothing was done and the Amended Act so changed the line of road authorized by the original charter, that Boonville, in Cooper county, was the western limit, so that as part of that line, there was no authority to build the road through Fayette to Glasgow, as provided in the terms of subscription. This being true the act of March 24th, 1868, "*granted a power which did not before exist,*" *it was a new grant and it does not matter whether it gave a right to build a new branch of an old road, or an extension of the same, or one altogether new.* The constitution restriction applies. It is an exercise of prohibited power.

In case of Sherrard vs. Lafayette County, 3d Dillon, C. C. R., p. 236, seventh finding of the court: The bonds were issued without theq uestion of their issue ever being submitted to the votes of the people of the defendant county, as required by Section 14, Article XI, of the Constitution of the State, which went into effect July 4, 1865.

* * * * * * * * * * *

Dillon, J., decides that the county had no legislative authority to issue the bonds.

In County of Scotland v Thomas (Otto, 688), we find the following: "This prohibition (Section 14, Article XI) is against the legislature's authorizing municipal subscriptions, or aid to private corporations. It does not purport to take away any authority already granted. It only limits the power of the legislature in granting such authority for the time to come." And in Callaway v. Foster, 93

U. S., 567, Hunt, Justice, holds Callaway County bonds valid because subscription was made before Act of March 24, 1868 was passed: Justices Miller, Davis, Field and Bradley dissenting, say: "The subscription of stock to the railroad company in this case could only be made under amendatory Act of March 24, 1868, and that the Constitution of the State required a vote of the county to make such subscriptions valid. As there was no such vote, and no recital in the bond or elsewhere to show that there was, the bonds are void."

Town of Concord vs. Portsmouth Savings Bank, 93 U. S., 625. "The Constitution of the State of Illinois, adopted July 2, 1870, annulled the power of any county, city or town * * * to subscribe to the capital stock of any railroad, and make donations to or loan its credit in aid, etc.,—rendered the Act of 1867 ineffective." The principle involved is, that the Constitution annihilated both prior and subsequent legislation antagonistic to its provisions.

In County of Moultrie vs. Savings Bank, U. S. R., 632, the court said: "Valid contracts, entered into before the adoption of Constitution, are not affected by it. It must be conceded that, had no subscription been made, or engagement to subscribe entered into before the new Contstituion took effect, none could have been made after.

To take another view of this case. On the 23d day of December, 1868, the County Court of Howard County made their subscription. By the terms of that subscription what did they propose to do? Build a road from Louisiana, in Pike County, by Bowling Green, to a point on the North Missouri Railroad, between the southern limits of the town of Wellsburg, in Montgomery county, and the northern limits of Mexico, in Audrain county, thence to the Missouri river, as authorized by the Act of March 20, 1859? Do not the very terms of subscription show that it was not a a subscription for any such purpose? Was not this road the sole road authorized to be constructed by the act of March 10, 1859? Did this act authorize counties to subscribe for the construction of any but this single line of road? Is it not shown by the finding the subscription of Howard county was for a different road? The Howard county subscription was as follows: ***For a road to run on the most practicable route from Mexico to Fayette in Howard county and from thence to the Missouri River.*** See order of subscription, printed record page 39. A road not authorized by the Act of March 10, 1859. Can a subscription to build a road not authorized to be constructed by the Act of March 10, 1859, be sustained by reciting as authority that Act? Are you not driven to the Act authorizing the construction of the road—to build which the subscription was made—for your authority to subscribe? If so, is there any other authority for the construction of this road than the Act of March 24, 1868? The holders of the bonds, made to meet this subscription, must plant themselves upon the Act March 24, 1868. They have no other ground to stand upon.

If the Act of March 10, 1859, did not authorize the subscription of Howard County, it being the only legislation prior to the adoption of the constitution of 1865, then the legislative authority to make such subscription must be found in legislation subsequent to the adoption of the constitution of 1865. The only other act of the legislature was the Act of March 24th 1868.

3. Section 14, Article XI, was designed to prevent the creation of debts by County Courts on their own responsibility, an evil that had been so onerous, that a prohibitory clause was demanded to reach the Legislature as well as the County Courts. When adopted it was supposed, after

July 4th, 1885, that the origanic law of the State had effected this.

In Jarrott vs. Moberly, U. S., 103, page 585, Justice Field wisely expounds the object of this clause:

"The object of the inhibition in the State Constitution was to prevent the creation of debts by counties, cities and towns, on behalf of any company, association or corporation without the assent of two-thirds of the qualified voters. The loan of their credit, that is the placing of their obligations for the payment of money for the use of companies, was the usual mode in which they incur indebtedness. Aid in this way to companies, particularly such as were organized for the construction of railroads, was given so frequently by municipal bodies in Missouri, before the Constitution of 1865 went into effect, as in many instances to greatly embarrass and subject them to *burdensome and oppressive taxation* to provide for the interest on their obligations and the ultimate payment of the principal. * * In many instances the roads in aid of which the bonds were issued were never constructed. As no benefit resulted to the counties and cities their inhabitants naturally felt impatient under the burdens their officers had improvidently imposed. It was the purpose of the Constitutional provision *to check thsee abuses*, by requiring the *previous* assent of two-thirds of the qualified voters of the municipality before any more stock should be subscribed by them or any further indebtedness be thus incurred."

This language completely covers the case at bar. By the Act of March 10th, 1859, counties on the *route* of the road were authorized to subscribe to the Louisiana and Missouri River Railroad Company to the extent of three millions of dollars, and no more. Section 14, Article XI, in 1865, said in terms: This is the limit of this class of indebtedness for the roads that can be subscribed by County Courts on their own motion.

For three years this status of the law stood a perfect protection to the tax-payers. On March 24th, 1868, at the instance of the directors of the Louisiana and Missouri River Railroad the Legislature of Missouri passed the amendatory Act. The Constitution said no more county debts, without a vote of the qualified voters. The Act said you may add seven millions more of this class of debt, and took no notice of the requirement of the Constitution—provided for no vote. Is it not asking too much of this court to say debts of this character and magnitude were not prohibited by the Constitution; that the assent of the tax-payer is a matter of no moment; that he is to be told the security of the 14th Section, in which he trusted is no security: that it is a myth? As if to meet the language above quoted, it appears the tax-payers of Howard county never assented to the subscription or authorized the creation of the debt sought to be imposed upon them and that the road was never built.

4th. That the Legislature could amend charters granted prior to 1865 is conceded, but all amendments were subject to Section 14, Article XI, from the date of the adoption of the Constitution, July 4th, 1865. This conceded power was subject to Section 14. "*The General Assembly shall not authorize any county* * * * to become a stock holder, etc., * * * unless two-thirds of the qualified voters of such county at a regular or special election to be held therein shall assent thereto." When the authority was granted prior to the adoption of the Constitution, the Supreme Court of Missouri and this Court have held that subscriptions made after the Constitution went into effect were not affected by it. The case at bar is not within this rule. Without the legislation of March 24, 1868, no subscription by Howard county would ever have been asked for or obtained. No such road as sought for by the terms of order December 23, 1868.—"First, the road to run on the most practicable route from Mexico to Fayette, in Howard county, and from thence to the Missouri river at Glasgow"—in fact was thought of on the 16th day of January 1868. By the acceptance of the Callaway county subscription (see printed record page 54) the road authorized to be built by the Act of March 10th, 1859, was definitely located and agreed to be constructed through the City of Fulton by way of Bloomfield, as near as practical, to the Missouri river. The power and authority of the Act of March 10th, 1859, was completely used up—exhausted. Howard countywas never considered by the corporation as in any way interested or connected with this road, and this road was then commenced to be built, and built and operated. (See 10th finding printed record, page 55.) The purposes of the Act of March 10th, 1859, were all accomplished.

The Act of March 24th, 1868, although an amendment, was in fact a grant of new powers. The Act of March 10th, 1859, had exhausted itself. The three millions contemplated to be used by that Act was all absorbed. The Constitution stood up as a barrier to further subscriptions by County Courts without assent of the qualified voters.

We contend that seven millions increased capital to take the form of county subscriptions cannot envelope itself in the armor of the Act of March 10th, 1859, to escape the well directed shaft, Section 14th, Article XI, of the Constitution of 1865. This Constitution and provision was for a plian purpose—no more subscriptions by counties to railroads without assent of the people who have to foot the bill.

The road authorized to be built by Act of March 10th, 1859 was practically provided for and disposed of when the Callaway County subscription was accepted.

The line of road provided for in the Act of March 24th, 1868, called the main line, is essentially a totally different road from that authorized by Act of 10th of March, 1859, and is clearly within the provisions of Section 14th, Article XI, Constitution of 1865.

The bonds and coupons sued on are clearly invalid, and the judgment below should be reversed.

JOHN D. STEVENSON,

For Plaintiff in Error.

110-386

OFFICE SUPREME COURT U.S.
FILED
JAN 21 1884
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States.

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OCTOBER TERM, 1883.

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THE COUNTY OF HOWARD, - - PLAINTIFF IN ERROR,

vs.

GAIUS PADDOCK, - - - - DEFENDANT IN ERROR,

◆

STATEMENT AND BRIEF.

JOHN H. OVERALL,
Attorney for Defendant in Error.

IN THE

Supreme Court of the United States.

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STATEMENT.

The "Louisiana and Missouri River Railroad Company" was incorporated by special act of the Missouri Legislature, on March 10th, 1859. (Record pp. 20–8.)

The 35th section of the act authorized the company "to locate and construct a railroad from the City of Louisiana, in the County of Pike, by way of Bowling Green in said County, to some suitable point on the North Missouri Railroad, intersecting said road between the southern limits of the town of Wellsville in Montgomery County and the northern limits of the town of Mexico in Audrain County, thence to the Missouri river at the most eligible point on a line the most suitable and advantageous as regards distance, grade, cost of road and permanent value of same." (Record p. 28.)

The 29th section made it "lawful for the County Court of any county, in which any part of the road of said railroad may be, to subscribe to the stock of said railroad company * * * and issue the bonds of such county to raise funds to pay the stock thus subscribed." (Record p. 27.).

On July 4, 1865, a new constitution was adopted in Missouri, prohibiting future subscriptions of stock to railroad companies by municipal corporations unless previously sanctioned by a two-thirds vote of the people and prohibiting the legislature from passing thereafter special acts of incorpation.

But special authority was therein reserved to the legislature to amend existing acts in the following words, to-wit:

"All statute laws of the State now in force, not inconsistent with the constitution, shall continue in force until they shall expire by their own limitations, or be amended or repealed by the General Assembly." This provision the Missouri Courts have construed as conferring ample authority on the Legislature to amend existing charters. (48 Mo. 468.)

By virtue of this provision of the constitution the legislature on March 24, 1868, passed an act amending the Louisiana and Missouri River Railroad charter. (Record pp. 28 to 37.)

Section 21 of the amended act is substantially the same as section 35 of the old act. (Record p. 35.)

Section 22 of the amended act authorized the building of a branch road "to be known and designated as the 'South Branch of the Louisiana and Missouri River Railroad,' and all subscriptions to the capital stock of said Company, intended to be used in the construction of said branch shall be made in separate books," &c. This branch road was to touch the Missouri river at some point "between the town of St. Aubert in Osage County and the City of Boonville in Cooper County." (Record p. 35.)

The company having been organized, the Board of Directors accepted the amendatory act on May 5, 1868, (Record p. 46), and such acceptance was duly filed in the office of the Secretary of State. (Record pp. 37–8.)

On the same day (May 5, 1868,) the Company by a unanimous vote of its directors proceeded to locate the Main Line of its road as follows, to-wit:

Beginning at Louisiana, thence through Bowling Green to Mexico in Audrain County; and "thence by the best and most practicable route through the counties of Howard, Saline, Lafayette and Jackson to Kansas City, in the County of Jackson," &c. (Record p. 46.) On the same day the branch road is located in the following words, to-wit:

"Beginning at a point on the Main Line not farther east than the town of Bowling Green, and thence along the best and most practicable route to the city of Fulton, in th County of Callaway, thence to some point on the Missouri river, the most eligible and practicable." (Record p. 46.)

On November 4, 1868, the County Court of Howard County adopted and spread on its records a resolution proposing to subscribe four hundred thousand dollars to the capital stock of said Company, and to issue the bonds of the county in payment thereof, on certain conditions, among which was one that the road should run "from Mexico to Fayette in Howard County, and from thence to the Missouri river at Glasgow." (Record pp. 38–9.)

On November 6, 1868, the company accepted the above proposition by resolutions of its board, and the clerk of the court duly notified the county court of such acceptance on Dec 23d, 1868. (Record, p. 40).

On the last named date, Dec. 23, 1868, the county court appointed Andrew J. Herndon Commissioner of Howard

County, and instructed him to subscribe four hundred thousand dollars to the capital stock of the railroad company upon the terms and conditions set out in the order of the court of date Nov. 4, 1868, (Record, p. 39).

On April 16th, on September 2nd, and on November 15, 1869, the County Court made various modifications in the conditions of its subscription. (Record, pp. 40-41).

And on July 15, 1870, the County Court in term, adopted and spread on its records, the following order to-wit:

"The court being satisfied that the Louisiana and Missouri River Railroad Company has made a contract with a responsible company to furnish the iron and rolling stock for said road, the original subscription to said road is modified as to time of beginning and completing said road as follows, to-wit:

The company shall begin the work thereon in this county within twenty days after the clerk of this court shall deliver to the agent of said company seventy thousand dollars of the bonds of the county for that purpose, and shall vigorously prosecute the same so as to complete the same within two years from this date. The clerk of this court shall cause to be prepared bonds of the county for four hundred thousand dollars, (less the sum of eight thousand and eighty-nine 23-100 dollars, heretofore paid to said company on subscription), payable to the Louisiana and Missouri River Railroad Company or bearer, at the National Bank of Commerce in New York, ten years after date, bearing eight per cent. per annum interest, payable semi-annually at the same place, both principal and interest payable in current funds, with coupons for interest attached, the bonds to be signed by the presiding Justice of this Court and attested by the clerk, with the seal of the court, the coupons to bear the signature of the clerk lithographed, the bonds and coupons to be dated when issued, and the clerk shall deliver to the agent of said Railroad Company, seventy thousand dollars thereof, and on the completion of each fifth of the work on said road in this county, the like sum, until three hundred and fifty of said bonds are delivered, and the balance of said bonds shall be delivered when the company is ready to begin laying the track thereon (Record p 41-2)

The County Court in session March 7, 1871, by the following order, directed the clerk to deliver seventy thousand dollars of these bonds to this company.

"Satisfactory evidence having been produced to this court, that, one fifth of the grading and bridging on the Louisiana and Missouri River Railroad in this county has been completed, it is ordered that the clerk of this court deliver to said Louisiana and Missouri River Railroad Company seventy thousand dollars of the bonds of this county." (Record p. 42.)

On May 3. 1871, by the following order, the clerk was directed to deliver another seventy thousand dollars of these bonds to the company.

"Satisfactory evidence being presented to the court that one-fifth of the work on the Louisiana and Missouri River Railroad, in this county, has been completed since the last issue of bonds to said Railroad Company, it is ordered that the clerk of this court deliver to said company $70,000 of bonds of the county." (Record p. 42.)

On June 12, 1871, by the following order, the clerk was directed to deliver another seventy thousand dollars of these bonds to the company.

"Andrew J. Herndon, clerk of this court, presents the certificate of M. C. Little, chief engineer of the Louisiana and Missouri River Railroad Company, certifying that up to the 1st day of June, 1871, three-fifths of the estimated costs of the road-bed of said road in Howard County had been completed and the clerk being satisfied that three-fifths of the work on said railroad in this county had been done by said company, it is ordered that said clerk deliver to said Railroad Company or its agents seventy thousand dollars of bonds of the county, dated June 1st, 1871. (Record p. 42.)

On August 16, 1871, by the following order, the clerk was directed to deliver another seventy thousand dollars of these bonds to the company.

"The chief engineer of the Louisiana and Missouri River Railroad Company files a certificate stating that four-fifths of the work on said railroad, in this county has been done; the court thereupon order the clerk to deliver to said Railroad Company seventy thousand dollars of the bonds of the county, to be dated the 1st day of September, 1871." (Record p 43.)

The bonds delivered to the Company pursuant to the above orders, amounting to three hundred and fifty thousand dollars, passed upon the market and the court below found that defendant in error is a holder for value of the amounts sued on.

To affect the validity of the bonds plaintiff in error, against objection, presented an order of the county of Callaway dated Jan. 16, 1868, appointing an agent to take stock in the Louisiana and Missouri Railroad Company (Record p. 54.) This was previous to the adoption of the amended charter and long previous to the location of the line of road. It further appears that when said agent of Callaway County appeared before the Board of Directors on January 31, 1868, bearing the proposition of that county, the Board passed the following resolution: "Resolved that the location of the route of the road be postponed until the objects contemplated in the foregoing resolution shall have been attained." (Record p. 52.) One of the objects thus contemplated was such an amendment of the charter as to authorize a branch road for the benefit of Callaway County, (p. 52.)

The court below found that while Howard County had never demanded of the Railroad Company certificates of stock, yet it had by duly appointed agents at various elections of directors voted the 3,580 shares it had paid for in cash and by issuance of bonds; that taxes were levied, moneys collected and interests on the bonds paid up to March, 1878; that no work was done on the road prior to March 24th, 1868, and that the road was never completed.

BRIEF.

I.

The act of the General Assembly of Missouri approved March 10, 1859, incorporating the Louisiana and Missouri River Railroad Company made Howard County a possible site through which the route of the road might be located.

Section 35 of the act of incorporation provides that "said company shall have power to mark out, locate and construct a railroad from the City of Louisiana, in the county of Pike, by way of Bowling Green, in said county, to some suitable point on the North Missouri Railway, intersecting said road between the southern limits of the town of Wellsburg in Montgomery County, and the northern limits of the town of Mexico, in Audrain County, thence to the Missouri river at the most eligible point in a line the most suitable and advantageous as regards distance, grade, cost of road and permanent value of same."

The starting point of the road was fixed at Louisiana, in the county of Pike. Two points only in the ~~[illegible]~~ route were indicated, to-wit: Bowling Green, in Pike County, and the North Missouri Railroad between the southern limits of the town of Wellsburg in Montgomery County and the Northern limits of the town of Mexico, in Audrain County. The termination was to be upon the Missouri River at the most eligible point, distance, grade, cost of road and permanent value considered.

Courts take judicial notice of the existence, boundaries and geographical positions of counties created by law.

Hence it required no evidence in the court below to show that Howard County lies west of Audrain and Montgomery and between the last named counties and the Missouri river. It is true the act did not require the road to be built in a direct line, but an examination of the map filed by plaintiff in error will show that an extension of the road through Bowling Green and Mexico to the Missouri river in a direct line would pass through Howard county.

In the case of County of Schuyler v. Thomas, 98 U. S. 169, a similar question was passed upon by this court. There the railroad was to be constructed from the city of Alexandria, in the county of Clark, in the direction of Bloomfield, in the State of Iowa. An examination of the map will show that a direct line from Alexandria to Bloomfield passes many miles east of the extreme eastern portion of Schuyler. Yet this court decided that the terms of the charter "any county in which any part of the route of said railroad may be"—the exact words used in the Louisiana and Missouri river charter—included Schuyler County, the court saying "a straight line is not required by the statute, nor a line having the fewest curves or angles * * The most practicable and advantageous line is to be adopted, depending upon all the elements entering into the economy, productiveness and local advantages which would be sought by prudent men in determining such a question. * * * These statutes are to be construed as they were intended to be understood when they were passed, twenty years since.

The after-wisdom, obtained by unfortunate results, cannot justly be applied in their interpretation. A construction may *now* be sought which will avoid the payment of the debts contracted for building the road. *Then* every inducement was presented to make subscriptions and obtain the money. Little respect would have been paid to the careful legislator or the strict interpreter of the law, who, twenty years ago, had doubted the power of these counties, to make the subscription in question."

It will thus be seen that, whether we apply the most rigid rules to the construction of this charter, or, as was done in the Schuyler County case, seek simply to ascertain what was the intention of the legislature, Howard County posessed all the requirements of the act of the legislature and was one of the counties in which a part of the route of said railroad "may be."

II.

The route of the road as ultimately selected passed through Howard County.

On May 5th, 1868, the Board of Directors of the company resolved "That the main line of said road be, and the same is hereby located as follows: Begining at the most elegible point in the corporate limits of the city of Louisiana, in Pike county, Mo., thence up the valley of the Noix Creek, crossing the summit at or near the town of Bowling Green, in said county, thence near as practicable or advisable on the line of the survey as reported by F. C. Arnes, to the intersection of the North Missouri railroad within the corporate limits of the city of Mexico, in Audrian County; thence in the best and most practicable route through the counties of Howard, Saline, Lafayette and Jackson to Kansas City in the County of Jackson in the State of Missouri." (See record p. 36.) It is true the road as located did not terminate when it reached the Missouri river. The Board assumed that they had power to cross the river by authority of an amendment of the charter of the company enacted, as declared in the preamble, for the purpose of "defining more explicitly the powers of the board of directors to fix the western terminus of said road," and which fixed that terminis "on either the north or south bank of the Missouri river, as may be selected by the Board of Directors." Whether such an amendment was constitutional it is not now necessary to discuss, as the right to locate the route of the road through Howard County was given both by the original and amended charter, and the bonds on their face declare that they were issued by authority of the original act.

On Nov. 4th, 1868, the County Court to secure the route of the road through Howard County, made to the company the following proposition: "It is ordered by the court that the following proposition be made to the Board of Directors of the Louisiana and Missouri River Railroad Company, to-wit: Howard County will subscribe four hundred thousand dollars to the capital stock of the railroad, payable in her bonds at par, such bonds to be payable in such time and manner as said County Court shall hereafter prescribe, to bear eight per cent. interest from the date of issue, on the following conditions.

1st. *The road to run in the most practicable route from Mexico to Fayette in Howard County, and from thence to the Missouri River at Glasgow.*

2nd. The work of grading and bridging the same, to be begun in good faith in said county within six months, and vigorously prosecuted, and the road to be completed and the cars running thereon from Mexico to the Missouri river, in Howard County, within two years.

3rd. The Board to present to the County Courts of Howard County before issuing said bonds, sufficient evidence of their ability to furnish the iron and rolling stock.

4th. Bonds of the county for seventy thousand dollars to be issued to the company when one-fifth of the grading and bridging in the county is completed, to be determined by an agent of the county, and the same amount for every fifth of grading and bridging reported completed by said agents.

5th. Bonds for the balance of said subscription to be issued to the company when the grading, bridging and tieing of said road in the county are completed.

6th. A depot to be established and kept within six hundred yards of the Court House at Fayette, and a depot to be established and kept at the City of Glasgow." (See Record p. 38.) On Nov. 7, 1868, this proposition was accepted by the Board of Directors by the adoption of the following resolutions:

"*Resolved*, 1st. The Louisiana and Missouri River Railroad Company hereby accept the proposition of the county of Howard, offering to subscribe four hnndred thousand dollars to the capital stock of the Louisiana and Missouri River Railroad Company, on certain conditions set forth in an order of the County Court of Howard County, made November 4th, 1868, a copy of said order now being on file in this office.

Resolved, 2nd. The president of this company is hereby instructed to put a surveying party on the route from Mexico to Glasgow, and complete the survey as soon as possible.

Resolved, 3d. The president is hereby inslructed to advertise for bids for the construction of that part of the route from Mexico to Glasgow as soon as the survey in his judgment is far enough advanced to justify it.

Resolved, 4th. This company is prepared to furnish satisfactory evidence to the County Court of Howard County, that it will be able to furnish the iron and rolling stock for the road when needed."

"*Resolved*, 5th. The secretary is hereby instructed to furnish the clerk of Howard County with a certified copy of these resolutions." (See record p. 47.)

Satisfactory evidence of the ability of the company to furnish the iron and rolling stock was furnished to the county court. The time within which to begin work was extended to five months from May 4, 1869, and the time within which the road should be completed was extended one year from Nov. 4, 1870. Work was begun on the road within the time specified and by Aug, 16, 1871, four-fifths of the work had been completed and four-fifths of the subscription paid by issuance of bonds of the county.

The proposition of Howard County accepted by the company thus became a valid subsisting contract, and the route of the road by the terms of that contract was located "*in the most practicable route from Mexico to Fayette, in Howard County, and from thence to the Missouri river at Glasgow*," and the original charter thus strictly complied with.

III.

It was not necessary to submit to the qualified voters of the county the question as to whether the subscription to the capital stock of the Railroad Company should be made by the County Court, and bonds issued in payment thereof.

The charter of the Louisiana and Missouri River Railroad Company contains no provision requiring a vote to be taken as to whether stock should be subscribed, but left the matter wholly discretionary with the County Courts of the counties through which the road runs. Sec. 29 of the charter provides as follows:

"It shall be lawful for the County Court of any county in which any part of the route of said railroad may be to subscribe to the stock of said Railroad Company, and it may invest its funds in stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interest and credit of the county." Similar powers are contained in various charters of Railroad Companies in the State of Missouri, and the question of the validity of the bonds issued in payment of such subscriptions without a vote of the people, has frequently been passed upon by the Supreme Court of Missouri and by this court As stated by the court in Smith *et al.* v. County of Clark, 54 Mo., 58. "The provisions of the Revised Code of 1855, and the amendatory acts of 1860 and 1861, and the constitutional prohibition, and the legislative adoption of that prohibition immediately after its passage, have been held by repeated adjudications, and without any conflicting opinions of the court or any individual jndge thereof, so far as the reports show, not to affect the repeal of privilege contained in special charters."

State *exrel.* Mo. & Miss. R. R. Co. v. Macon County Court, 41 Mo. 453.
K. C., St. Joe & C. B. R. R. Co v. Justices of Nodaway County Court, 47 Mo. 349.
State v. County Court of Sullivan County, 51 Mo 522.
State v. Green County Court, 54 Mo. 540.
County of Sullivan v. Thomas, 94 U. S. 682.
County of Henry v. Nicolay, 95 U. S. 619.
County of Cass vs. Gillett, 100 U. S. 585.

In the case of State *ex rel.* Wilson v. Garroutte, 67 Mo. 445 and State *ex rel.* Barlow v. Dallas County Court, 72 Mo. 329, by a divided court of three to two, a contrary view of the law is now held by the Supreme Court of Missouri. But Judges Napton and Hough, in their dissenting opinions in these cases, after discussing the merits of the question, finally dismiss it with the declaration that on the faith of the prior decisions of the court large amounts had been invested, and that they considered the question had been put at rest and become a rule of property which they had no right to disturb.

Subsequently the case of County of Ralls v. Douglass, 105 U. S. 928, came before this court and after reviewing all the authorities, both Federal and State, this court declared "such being the condition of the law on this subject down to April, 1878, we do not feel inclined to reconsider our former rulings, and follow the later decisions of the Supreme Court of the State in State v. Garroutt, (67 Mo.

445,) and State v. Dallas County, (72 Id. 329), where this whole line of cases was substantially overruled. The bonds involved in this suit were all in the hands of innocent holders when the law of the State was so materially altered by its courts. In our opinion the rights of the parties to this suit are to be determined by the "law as it was judicially construed to be when the bonds in question were put on the market as commercial paper."

This proposition has been so frequently considered by nearly all the present members of this court, with such uniform conclusions, that its further discussion is unnecessary.

IV.

The amendment of the charter of the Louisiana and Missouri River Railroad Company approved March 24th, 1868, did not take away the right of Howard County to subscribe to the capital stock of the company and to issue bonds in payment thereof without a vote of the people.

The purpose of the amendatory act is expressed by its title in the following words: "An act to amend an act entitled 'an act to incorporate the Louisiana and Missouri River Railroad Company,' by increasing the amount of the capital stock of said company, defining more explicitly the power of the Board of Directors to fix the western terminus of said road, authorizing the location and construction of a branch road, and conferring upon said Board the necessary powers to carry into effect the several objects contemplated by this charter." Certain sections of the original act were struck out, but they were merely directory provisions for the government of the company or assertions of right incidentally belonging to every railroad corporation. Neither by declaration in the title of the amended law, nor by express provision, was the right of municipal subscription without a vote of the people taken away. On the contrary, section 29 of the original law was re-enacted in the following words: "Sec. 20. It shall be lawful for the County Court of any county in which any part of the line of said railroad may be located, to subscribe to the stock of said company, and issue the bonds of the county to raise funds to pay the stock thus subscribed, said bonds to bear interest not exceeding ten per cent. payable semi-annually, and to take proper steps to protect the interest and credit of the county."

The constitution of Missouri of 1865, while it prohibited the legislature from thereafter authorizing municipalities to subscribe for stock of corporations without a vote of the people, reserved to the legislature the right to amend charters theretofore granted. While the courts of Missouri have decided that this power to amend did not authorize the legislature by amendment to confer the power of subscription or issuance of bonds without a vote where it did not already exist before the adoption of the constitution, yet both those courts and this have decided that the mere fact that a charter was amended and greater franchises conferred did not take away the right. The amended charter attaches to itself all the qualities and principles of the old one.

State v Green Co., 54 Mo. 540.
State v. Callaway Co., 51 id. 395.
State v. Sullivan Co., id. 520.
Callaway Co. v. Foster, 93 U. S. 567.

This arises from the rule of statutory constructing that the amendment of a law does not repeal the original unless such intent is expressly declared or necessarily inferred from some inconsistency that would otherwise exist. But plaintiff in error insisted in the court below that while Howard County was by the act of 1859 authorized to subscribe to the capital stock of this road without a vote of the people, yet this right was intended to be taken away by the act of

1868, because the latter act authorized the company to extend the road passing through Howard County to Kansas City on the south side of the river, while the terminus of that part of the road passing through Callaway County, was where the road first touched the river. And plaintiff in error attempts to support this position by the decision of the court in the case of Callaway County v. Foster 93 U. S. 567. All that this court decided in that case was, that Callaway county was "included in the terms of the original act and had power upon its own authority to subscribe for the stock;" and that "the branch was the original, *so far as Callaway was concerned*, with a change of names simply and the amendment became a part of the original act." This court did not say in their opinion that the road running through Howard county was a new enterprise, not contemplated by the act of 1859; on the contrary this court declared in that case that under the act of 1859 this road "might pass through Howard and Boone counties terminating at Glasgow." In other words that as the branch was the original road, so far as Callaway was concerned *with a change of names* so the main line was the the original line so far as Howard was concerned *without a change of name.* Rather than its being inferred that the legislature intended by the amendment to take away from Howard County the right of subscription, the conclusion is irresistible that it intended not to take away such right. Section 29 of the amended law is as follows: "The said company should have power to mark out, locate and construct a railroad from the city of Louisiana, in Pike county, by way of or near the town of Bowling Green, in said county, and thence west to a point on either the north or west bank of the Missouri river as may be selected by the board of directors: the said road to be located between the points thus indicated, on a line the most suitable and advantageous as regards distance, grade, cost of road and permanent value of the same. This road should be so construed as to authorize the location of the line of said road across the Missouri river at any point that may seem most suitable for that purpose and that may best subserve the interests of the company." This section did not compel the company to build its railroad across the river after it reached the town of Glasgow but permitted it to stop at Glasgow where it first touched the river. It was this privilege, to stop at Glasgow, that both parties had in view when by the terms of subscription and by the contract between the county and the company the road was to be built through Howard county *to the Missouri river at Glasgow.* As if to emphasize the fact that the legislature did not intend to take away from Howard County the right to subscribe to the capital stock of this road the following section was added to the charter and declared in the title to be one of the purposes for amending the charter! "Sec. 22. It shall be lawful for the said company to mark out, locate and construct a branch of its said road, commencing at a point in the line thereof, to be selected by the board, not further east than the town of Bowling Green, in Pike county, and running thence by the most practicable and advantageous route to any point on the Missouri river between the town of St. Aubert in Osage County and the city of Boonville, in Cooper county. Said branch road shall be known and designated as the "South Branch of the Louisiana and Missouri River Railroad" and all subscriptions to the capital stock of said company, intended to be used in the construction of said branch, shall be made in separate books, opened under the direction of the board at such places as may be selected for that purpose. Such subscriptions shall specifically designate the objects for which they are made, and no part of the funds paid therein shall be used in the construction of the main line of said road, but shall be faithfully applied to the building of such branch." The writer of this brief at the time of bringing the suit of State v. Callaway County 51 Mo. 395 to pre vent the bonds of Callaway County from being issued and sold to innocent parties, believed, as did the Supreme court of Missouri, that this section was an attempt to evade the provision of the constitution, but neither that court not any member of the bar of Missouri, until eight years after these bonds were issued supposed that Howard and Boone counties did not have the right without vote of the people to subscribe to the capital stock of the Louisiana and Missouri River Railroad company and issue bonds in payment thereof under the act of 1859 as well as the amendatory act of 1868.

V.

That the certificates of stock were never issued and the road never operated through Howard County can not effect plaintiffs right to recover.

The court below found that the certificates *had never been demanded* and that the 3,580 shares paid for in cash and by issuance of bonds were voted by duly appointed agents at various elections of directors. This clearly proves that the right of the county to the certificates was never brought in question. Besides the certificates are merely evidences of the ownership of stock, and the stock and not the evidence of it, is the thing of value.

If Howard County had the power to issue these bonds it is immaterial here whether or not the road was ever operated. By the contract between the county and the company the bonds were to be and were issued in blocks of $70,000, as each one-fifth of work on the road in the county was completed. The agents of the county were careful to see that the company was entitled to each bond as it was issued. The bonds were put on the market as soon as received by the company. They are negotiable securities. Taxes were levied, moneys collected, and interest paid on the bonds up to March 1878. Paddock became the *bona fide* holder of the bonds having purchased them in open market for value, before mature, the county not then having raised any question as to their validity and he having no reason to believe such question would ever be raised. As aptly stated by this court in Scotland County v. Thomas. "The project of the railroad promised a great publlic improvement, conducive to the interests of the counties through which it would pass. Its construction would greatly depend upon the local aid and encouragement it might receive. The interests of its projectors and of the county it was to traverse were regarded as mutual. The power of the adjacent counties and towns to subscribe to its stock as a means of securing its construction, was desired not only by the company but by the inhabitants. Whether the policy was a wise one or not is not now the question. It was in accordance with the public sentiment of that period. The power was sought at the hands of the legislature and was given. It is too late now for the county to complain that it made a bad bargain."

The stock that it owns in the company is of great value and while the sale of it would not pay the whole debt of the county it would go far towards its extinguishment. It would certainly shock the moral sense for a court to decide the bonds invalid and the county be thus enabled to profit in the great pecuniary loss of those who invested their means, relying on the plighted faith and credit of the County.

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